150 U.S. 47

RECORD, CASE No. 13,854.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~244~~. 37

JOHN H. GORDON; MARY A. GORDON, AS EXECUTRIX OF JAMES F. GORDON, DECEASED; AND ELIZA W. OSBORNE, FREDERICK HARRIS, AND THOMAS M. OSBORNE, EXECUTORS OF DAVID M. OSBORNE, DECEASED, APPELLANTS,

vs.

ABEL HOOVER AND WILLIAM GAMBLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED OCTOBER 21, 1889.

in approved notes maturing within a reasonable time. The retail price of said harvester is four hundred dollars.

Feb. 12th, 1869.

CALDWELL, TWICHELL & CO. [L. S.]
SAMUEL KLINE. [L. S.]

U. S. Internal revenue.

5 5

Five cents. Feb. 12, 1869. C., T. & Co. S. K. (1863)

5 5

Agreement.

[Endorsed:] = 3697. U. S. C. c't, S. D. of Ohio. In equity. James F. Gordon *et al. v.* Benj. H. Warder *et al.* Defendants' Exhibit Caldwell, Twitchell & Co. Town License. Geo. H. Sonneborn, notary public & spec'l ex'r. (Seal George H. Sonneborn, notary public, New York.) Filed Jan. 28, 1889. B. R. Cowen, clerk.

[Endorsed:] Case No. 13,853. Supreme Court of the United States, October term, 1892. Term No., 243. John H. Gordon *et al.*, appellants, *vs.* Benjamin H. Warder *et al.* Stipulations and addition to record. Filed March 21, 1893.

150 U.S. 47

RECORD, CASE No. 13,854.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~244~~. 35

JOHN H. GORDON; MARY A. GORDON, AS EXECUTRIX OF JAMES F. GORDON, DECEASED; AND ELIZA W. OSBORNE, FREDERICK HARRIS, AND THOMAS M. OSBORNE, EXECUTORS OF DAVID M. OSBORNE, DECEASED, APPELLANTS,

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RECORD, CASE No. 13,854.

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OCTOBER TERM, 1892.

TERM No., 244.

JOHN H. GORDON; MARY A. GORDON, AS EXECUTRIX OF JAMES F. GORDON, DECEASED; AND ELIZA W. OSBORNE, FREDERICK HARRIS, AND THOMAS M. OSBORNE, EXECUTORS OF DAVID M. OSBORNE, DECEASED, APPELLANTS,

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1 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April, being also the second day of that month, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States of America the one hundred and thirteenth—present, the Honorable George R. Sage, district judge—among the proceedings had were the following, to wit:

JAMES A. GORDON & Others, Complainants,
against
HOOVER AND GAMBLE, Defendants. } In Chancery. # 3698.

Be it remembered that heretofore, to wit, on the seventh day of November, in the year of our Lord one thousand eight hundred and eighty-four, came the complainants, by their solicitors, Stem & Peck, and filed in the clerk's office of said court their certain bill in chancery, said bill being clothed in the words and figures following, to wit:

2 United States Circuit Court, Southern District of Ohio. No. 3698. In Equity.

To the judges of the circuit court of the United States for the southern district of Ohio:

James F. Gordon and John H. Gordon, of Rochester, N. Y., and David M. Osborne, of Auburn, N. Y., each of whom is a citizen of the State of New York, bring this their bill against Abel Hoover and Wm. Gamble, copartners under the firm name of Hoover and Gamble, of Miamisburg, Ohio, citizens of said State of Ohio.

3 & 4 And thereupon your orators complain and say that prior to the 12th day of May, 1868, your orator, the said James F. Gordon, became and was the first and original inventor of certain new and useful improvements in grain-binders not known or used before his invention thereof and which were not at the time of his application for a patent therefor in public use or on sale with his consent and allowance; and your orators further show unto your honors that the said James F. Gordon, so being the inventor of the said improvements in grain-binders, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing acts of Congress, and duly complied in all respects with all the conditions and requirements of said acts of Congress, and that on the said 12th day of May, 1868, letters patent of the United States, numbered 77878, signed, sealed, and executed in due form of law, for the said invention or discovery

were issued to the said James F. Gordon, whereby there was secured to him, his heirs, executors, administrators, and assigns, for the term of seventeen years from the said 12th day of May, 1868, the full and exclusive right of making, using, and vending the said improvement in grain-binders therein specified and claimed throughout the United States and the territories thereof, as in and by said letters patent or a certified copy thereof, in court to be produced, will more fully and at large appear.

And your orators further show unto your honors that prior to the sixteenth day of June, 1874, your orator, the said James F. Gordon, became and was the first and original inventor of certain
5 other new and useful "improvements in grain-binders" not known or used before his invention thereof and which were not at the time of his application for a patent therefor in public use or on sale with his consent or allowance; and your orators further show unto your honors that the said James F. Gordon, so being the inventor of the said last-mentioned improvements in grain-binders, made application to the proper department of the Government of the United States for letters patent in accordance with the then existing acts of Congress and duly complied in all respects with all the conditions and requirements of said acts of Congress, and that on the said sixteenth day of June, 1874, letters patent of the United States numbered 151,967, signed, sealed, and executed in due form of law, for the said last above-mentioned invention or discovery were issued to the said James F. Gordon, whereby there was secured to him, his heirs, executors, administrators, and assigns, for the term of seventeen years from the said sixteenth day of June, 1874, the full and exclusive right of making, using, and vending the said improvements in grain-binders therein specified and claimed throughout the United States and the territories thereof, as in and by the said letters patent or a certified copy thereof, in court to be produced, will more fully and at large appear.

And your orators further show unto your honors that prior to the twenty-sixth day of October, 1875, your orator, the said James F. Gordon, became and was the first and original inventor of certain other new and useful improvements in grain-binders not known or used before his invention thereof and which were not at the
6 time of his application for a patent therefor in public use or on sale with his consent or allowance; and your orators further show unto your honors that the said James F. Gordon, so being the inventor of the said last-mentioned improvements in grain-binders, made application to the proper department of the Government of the United States for letters patent in accordance with the then existing acts of Congress, and duly complied in all respects with all the conditions and requirements of said acts of Congress, and that on the said twenty-sixth day of October, 1875, letters patent of the United States numbered 169,258, signed, sealed, and executed in due form of law, for the said last above-mentioned invention or discovery were issued to the said James F. Gordon, whereby there was secured to him, his heirs, executors, administrators, or assigns, for the term of seventeen years from the said twenty-sixth day

of October, 1875, the full and exclusive right of making, using, and vending the said improvements in grain-binders therein specified and claimed throughout the United States and the territories thereof, as in and by said letters patent or a certified copy thereof, in court to be produced, will more fully and at large appear.

7 And your orators further show unto your honors that prior to the commencement of this suit, for valuable consideration, certain assignments of certain interests or rights in and to the said letters patent and each of the same were duly made, executed, and recorded in the Patent Office of the United States, whereby, prior to the infringement hereinafter complained of, the entire right, title, and interest in and to the said inventions or discoveries secured by the said letters patent Nos. 77878, 151,967, and 169,258 and each of the same for the entire territory of the United States, except the State of Michigan, was conveyed to and became vested in your orators, who are now the sole owners of the said letters patent and each of the same for the said southern district of Ohio and in and for the entire territory of the United States, excepting only the State of Michigan, and of all rights of action or recovery for profits or damages arising from infringement of the said letters patent or either of the same, as in and by said assignments or certified copies thereof, here in court to be produced, will more fully appear.

And your orators further show unto your honors that the said improvements in grain-binders are of very great utility, and that they have been extensively applied by your orators to practical use, and that the public have generally acquiesced in your orators' exclusive right to the same, and that your orators have been and but for the infringement hereinafter complained of would still be in the undisturbed use, possession, and enjoyment of the exclusive privileges secured by the said letters patent and each of the same and in receipt of the profits therefrom.

8 And your orators further show unto your honors on information and belief that since the date of the said assignments and up to the time of the commencement of this action the said defendants, well knowing all the facts hereinbefore set forth and against the will of your orators and in violation of your orators' exclusive rights, unlawfully, wrongfully, and injuriously and with intent to derive profits from making and selling said machines and to deprive your orators of the royalties which they might and otherwise would have derived from the said exclusive rights, at Miamisburg, in said southern district of Ohio, and elsewhere in the United States, did make, use, and sell and did cause to be made, used, and sold grain-binding machines containing and embodying the said inventions or improvements or substantial and material parts thereof described and claimed in the said several letters patent and each of the same, whereby the said defendants have jointly infringed and are now infringing the said letters patent and each of the same, but how many — said machines the defendants so made, used, or sold or caused to be made, used, or sold your orators are ignorant and cannot set forth and pray discovery thereof; but your orators aver on information and belief that the said defendants have made and

sold or caused to be made and sold a large number thereof, and that they have derived and are now deriving large profits therefrom, but to what amount your orators are ignorant and cannot set forth, but your orators believe the amount to be about the full sum of one hundred thousand dollars and so charge the fact to be, and that your orators have been deprived of large royalties by reason of the aforesaid infringement of the said defendants and have thus incurred large damages thereby.

9 And your orators further show unto your honors that the said improvements described and claimed in the said several letters patent Nos. 77878, 151,967, and 169,258 are so nearly allied in character as to be capable of conjoint as well as separate use in grain-binding machines, and that the said inventions or substantial and material parts of the said inventions described and secured in and by each of the said several letters patent have been and are in fact used conjointly by the said defendants in the grain-binders manufactured and sold by them, and the said defendants have been and now are making, using, and vending in said southern district of Ohio and elsewhere in the United States large numbers of grain-binders, each of which contains in one and the same machine the inventions and improvements or substantial and material parts thereof described and secured in and by each of the said several letters patent.

And your orators further show that they fear and have reason to fear that unless the said defendants are restrained by a writ of injunction issuing out of this court they will continue to make and to sell the said grain-binding machines in infringement of the said letters patent and each of the same and in violation of your orators' exclusive rights thereunder, and that they will thereby cause irreparable injury to your orators' aforesaid exclusive rights.

And your orators further show unto your honors that the said defendants have had notice of the said infringement and have

10 been requested to refrain and desist therefrom, but have refused so to do and still continue to make, use, and vend grain-binding machines, each containing the inventions and improvements secured by said several letters patent.

Forasmuch as your orators can have no adequate relief except in this court, and as such proceedings are contrary to equity, to the end, therefore, that the defendants and each of them may show, if they can, why your orators should not have the relief hereby prayed and may upon their several and respective corporal oaths, to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises and the matters and things hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters and as if the same were hereinafter repeated—

And your orators therefore pray that the said defendants may be compelled by a decree of this court to account for and pay over to your orators all such gains and profits as have accrued or arisen to or been earned or received by said defendants from the unlawful use

of the said inventions described in and secured by said several letters patent and from infringement thereof as aforesaid, and in addition to pay the damages sustained by your orators from such infringement.

11 And your orators further pray that the said defendants and their servants, agents, attorneys, and workmen and each and every of them may be perpetually enjoined and restrained by an injunction issuing out of and under the seal of this honorable court from directly or indirectly making, using, or vending the said improvements or inventions described and claimed in said three several letters patent, No. 77878, No. 151,967, and No. 169,258, or in either of them or any part thereof or any grain-binding machines made in accordance therewith; that each of said several letters patent may be decreed to be valid and your orators to be the lawful owners of the same and each of them, and that the manufacture, use, and sale of said grain-binding machines by the said defendants is an infringement thereof, and that the said defendants may be decreed to pay the costs of this suit, and that your orators may have such other and further relief as to this honorable court shall seem meet and as shall be agreeable to equity.

And your orators further pray that a preliminary or provisional injunction may be issued out of and under the seal of this honorable court enjoining and restraining the said defendants, their servants, attorneys, agents, and workmen and each and every of them, from further infringement of said letters patent or either of them during the pendency of this suit.

May it please your honors to grant unto your orators, not only writs of injunction conformable to the prayers of this bill, but

12 also the writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court, directed to the said defendants, Abel Hoover and Wm. Gamble, and each of them, commanding them, at a certain time therein to be named and under a certain penalty therein to be limited, to be and appear before this honorable court, then and there to answer unto this bill of complaint and to perform and abide by such order and decree in the premises as to this honorable court shall seem meet and may be required by the principles of equity and good conscience.

And your orators will ever pray, etc.

JAMES F. GORDON.
JOHN H. GORDON.
DAVID M. OSBORNE.

GEO. B. SELDEN, *Of Counsel.*

13 UNITED STATES OF AMERICA, } ss:
Northern District of New York, }

James F. Gordon, being duly sworn, deposes and says that he is one of the complainants in the foregoing bill named; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those

matters he verily believes it to be true; and he further says that he verily believes the said James F. Gordon, in said bill named, to be the original, true, and first inventor of the improvements in grain-binders described and claimed in the said letters patent Nos. 77878, 151,967, and 169,258, and each of the same mentioned in said bill of complaint, and further that he verily believes that the said complainants above named are the lawful owners of each of the said letters patent.

JAMES F. GORDON.

Subscribed and sworn to before me this 1st day of November, 1884.

Z. L. DAVIS,
Notary Public. [SEAL.]

14 And afterwards, to wit, on the same day, to wit, there was issued out of the clerk's office of said court our certain subpœna in chancery directed to the marshal of the district and against the said defendants herein; said subpœna is clothed in the words and figures following, to wit:

Subpœna in Chancery.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Able Hoover and Wm. Gabble, copartners under the firm name of Hoover and Gamble, citizen- of and resident- of the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in January next, to answer a certain bill in chancery filed and exhibited in said court against — by James F. Gordon, John H. Gordon, and David M. Osborne, citizens of and resident- in the State of New York.

Hereof you are not to fail, under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the United States, this 7th day of November, A. D. 1884, and in the 109th year of the Independence of the United States of America.

Attest:
[SEAL.] WM. C. HOWARD, *Clerk.*

15 *Memorandum.*

The said defendant-*is* required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of December, 1884; otherwise the said bill may be taken *pro confesso.*

WM. C. HOWARD, *Clerk.*

Endorsed thereon: $25.00 deposited security for all costs for which the plaintiff may be liable in this suit.

And afterwards, to wit, on the 12th day of November, A. D. 1884, came the marshal to whom the said subpœna was in form directed and filed in the clerk's office of said court the same, with his proceedings had thereon endorsed, to wit:

Marshal's Return.

Received this writ at Cincinnati, Ohio, on Nov. 7, 1884, and served the same at Miamisburg, O., on Nov. 8, 1884, by handing to and leaving with each Able Hoover and Wm. Gamble a true copy of this writ.

LOT WRIGHT,
U. S. M., S. D. O.,
By CONRAD KENEDY, *Dep.*

2 services	4 00
2 copies	1 00
55 miles	3 30
	$8 30

16 And afterwards, to wit, on the 21st day of Nov., A. D. 1884, the following appearance was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appearance of Def'ts.

U. S. C. C., S. D. O.

JAS. F. GORDON *et al.*
vs.
HOOVER AND GAMBLE. } In Equity. No. 3698.

Please enter our appearance as solicitors and counsel for the defendants in the above-entitled cause.

PARKINSON & PARKINSON.

Nov. 21st, 1884.

17 Circuit Court of the United States for the Southern District of Ohio.

JAMES F. GORDON, JOHN H. GORDON, and DAVID M. OSBORNE *vs.* ABEL HOOVER and WM. GAMBLE, Partners as Hoover & Gamble.	In Equity. No. 3698.

Answer.

The joint and several answer of Abel Hoover and William Gamble to the bill of complaint herein.

These defendants, now and at all times hereafter saving and reserving unto themselves all and all manner of benefits and advantages of exception that may be had to the errors, uncertainties, insufficiencies, and imperfections in the said bill of complaint, for answer thereunto or unto so much thereof as they are advised is material and necessary for them to make answer thereto, answering, say as follows, to wit:

First. They deny upon information and belief that said
18 James F. Gordon was the true, original, or first inventor of any new or useful improvements in grain-binders as alleged in the bill of complaint herein; deny that said alleged improvements were new or useful; deny that they had not been known or used before his alleged invention thereof; deny that they had not been in public use and on sale for more than two years prior to the alleged applications for patents thereon, and avers that each and all of said alleged improvements had been in public use or on sale in this country for more than two years prior to the application of said James F. Gordon for patents thereupon; that said alleged improvements had been in public use or on sale in this country for more than 2 years prior to the application of said James F. Gordon for patents thereupon with the consent and allowance of said Gordon, and that they had been abandoned to the public.

Second. They are not sufficiently informed whether letters patent of the United States No. 77878, 131,967, and 169,258 or either of them were granted said James F. Gordon, and therefore deny the same; deny that the grants of said several letters patent were in accordance with the then existing acts of Congress or in conformity with law; deny that there was thereby secured to the said James
F. Gordon, his heirs, executors, administrators, or assigns,
19 any right or rights whatsoever; deny that the alleged improvements therein described and claimed involved patentable invention, and deny that the said Gordon was the inventor thereof or of any material part thereof.

Third. They aver upon information and belief that the said Gordon surreptitiously and unjustly applied for and obtained said several letters patent for what was in fact invented by others, who were using reasonable diligence in adapting and perfecting the same.

Fourth. They are not informed, save by the bill of complaint herein, whether certain or any assignments under said letters patent were made, executed, or recorded, as alleged in said bill of complaint, and they therefore deny the same; deny that complainants are the sole owners of the said letters patent for the southern district of Ohio or for the entire territory of the United States, except the State of Michigan, and deny that they have any such right, title, or interest therein or thereunder as to entitle them to maintain this suit.

Fifth. They deny that said alleged improvements are of very great utility or of any utility whatsoever; deny that complainants have applied said alleged improvements to practical use extensively or at all; deny that the public have acquiesced in complainants' alleged rights; deny that but for the infringement in said bill of complaint complained of complainants would be in undisturbed use, possession, or enjoyment of any exclusive privileges under or by virtue of said let-ers patent or either of them.

Sixth. They deny that they have infringed or are infringing said patents or either of them or any part thereof; deny that they have made, used, or sold, or caused to be made, used, or sold, machines containing or embodying the said inventions and improvements or either of them or any substantial or material part thereof; deny that they have made or realized any profits or advantages therefrom or have in any way violated the rights of complainants herein, and deny that complainants have been deprived of any royalties or have incurred any damage by reason of any wrongful act of these defendants.

Seventh. They deny that said alleged improvements are capable of conjoint as well as separate use; deny that they have used or are using the said alleged inventions or any substantial or material part thereof conjointly, and deny that they have been or are making grain-binders containing in one and the same machine the inventions and improvements alleged to be secured in and by each of said several letters patent or any substantial or material part thereof.

Eighth. They aver that the said letters patent No. 77878 do not exhibit a successful and practically operative machine and are therefore void.

Ninth. They say that said Gordon was not the original inventor of the alleged improvements or any material or substantial part thereof described in said letter- patent No. 77878, 151,967, and 169,258; that the same had been shown and described *on* letters patent and printed publications and works and had been in public use and on sale in this country prior to the supposed invention and discovery by said Gordon, and that the same had been abandoned to the public.

Tenth. They say as to said letters patent No. 77878 that the claims in the original application upon which said letters patent issued were required by the Commissioner of Patents to be limited as a prerequisite to the grant of the patent, and that such limitation

was accepted by Gordon and incorporated in the claims of his application by amendment, and that by said limitation the claims have been so restricted that they cannot be construed to cover any device or combination heretofore or at any time manufactured by the defendants herein or either of them.

Eleventh. They say that said alleged improvements described and purporting to be embraced in letters patent No. 77878 or
22 every material or subs-tial part thereof where, prior to the alleged invention thereof by said James F. Gordon, described and shown in the following letters patent of the United States, to wit:

No. 8083 to Watson, Renwick & Renwick, May 13, 1851.

No. 9930 to Watson and Renwick, Dec. 6, 1853, antedated June 6, 1852.

No. 16097 to J. C. Manny, July 6, 1858.

No. 21540 to A. Sherwood, Sept. 13, 1853; Sept. 14, 1858.

No. 37123 to W. P. Barker, Dec. 9, 1862.

No. 56580 to S. D. Locke, July 24, 1866.

No. 57714 to Higley & Columbia, Sept. 4, 1866.

Twelfth. They say that said alleged improvements described and purporting to be embraced in letters patent No. 77878 or every material or substantial part thereof were, prior to the alleged invention thereof by said Gordon, known to and publicly used by Charles B. Withington, of Janesville, Wis., at said Janesville and elsewhere; known to and publicly used by Wm. R. Baker, of Chicago, Ills., at and near Janesville, Wis., and elsewhere; known to and publicly used by S. D. Carpenter, of Madison, Wis., at and near said Madison and elsewhere; known to and publicly used by Sylvanus D.
23 Locke, of Hoosick Falls, N. Y., at and near said Hoosick Falls and elsewhere; known to and publicly used by Allen Sherwood, of Auburn, N. Y., at and near said Auburn, N. Y., and elsewhere.

Thirteenth. They say upon information and belief as to letters patent No. 151,967, granted June 16, 1874, that they had expired before the commencement of this suit for the reason that a prior patent for the same invention was granted said James F. Gordon in the Dominion of Canada in the year 1873, which patent expired long prior to the commencement of this suit and prior to the manufacture, uses, and sales complained of.

Fourteenth. They say upon information and belief that said letters patent No. 151,967 are now and ever have been invalid for the reason that they were not when issued so limited as to expire at the same time with said prior foreign patent granted by the Dominion of Canada to said James F. Gordon for the same invention.

Fifteenth. They say that the alleged improvements described and purporting to be embraced in letters patent No. 151,967, or every material or substantial part thereof, were prior to the alleged invention thereof by said Gordon described and shown in following letters patent of the United States, to wit:

24 No. 8083 to Watson, Renwick and Watson, May 13, 1851.

No. 9930 to Watson & Renwick, Dec. 6, 1853; antedated June 6, 1852.

No. 24400 to J. D. Osborne, June 14, 1859.

No. 50814 to A. Goodyear, Nov. 7, 1865.

No. 54672 to J. Barta, May 15, 1866.

No. 84693 to Hayes, Waldo & Main, Dec. 8, 1868.

No. 85210 to S. D. Carpenter, Dec. 22, 1868.

No. 87215 to W. W. Snell, Feb. 23, 1869.

No. 105,974 to W. H. Payne, Aug. 2, 1870.

No. 113,792 to P. A. Perry, April 18, 1871.

No. 149,233 to S. D. Locke, March 31, 1874.

Sixteenth. They say that said alleged improvements described and purporting to be embraced in letters patent No. 151,967, or every material or substantial part thereof, by said Gordon — known to and publicly made, used, and sold in the United States by the following persons, to wit: William Deering, of Chicago, Ill., at said Chicago and else-here; John F. Steward, of Chicago, Ills., at said Chicago and elsewhere; J. D. Osborne, of Constantine, Mich., at said Constantine and elsewhere; William W. Snell, of Brushford, Minn., at said Brushford and elsewhere; Sylvanus D. Lock, of Hoosick Falls, N. Y., at said Hoosick Falls and elsewhere.

25 Seventeenth. They say as to letters patent No. 169,258 that the alleged improvements described and purporting to be embraced therein, or every material and substantial part thereof, were, prior to the alleged invention thereof by said Gordon, described and shown in the following letters patent of the United States, to wit:

No. 8083, to Watson, Renwick & Watson, May 13, 1851.

No. 9930, to Watson & Renwick, Dec. 6, 1853, antedated June 6, 1852.

No. 50814, to A. Goodyear, Nov. 7, 1865.

No. 77878, to said James F. Gordon, May 12, 1868.

No. 85210, to S. D. Carpenter, Dec. 22, 1868.

No. 124,020, to William Siverd, Jr., Feb. 27, 1872.

No. 130,852, to said James F. Gordon, Aug. 27, 1872.

No. 149,233, to Sylvanus D. Locke, March 31, 1874.

No. 151,967, to said James F. Gordon, June 16, 1874.

No. 152,481, to said James F. Gordon, June 30, 1874.

Eighteenth. They say that said alleged improvements described and purporting to be embraced in letter- patent No. 169,258, or every material and substantial part thereof, were, prior to the alleged

26 invention thereof by said Gordon, known to and publicly used and sold in the United States by one Charles B. Withington, of Janesville, Wis., at said Janesville, and at Lewisburg, Pa., and elsewhere; also by the McCormick Harvesting Machine Co. of Chicago, Ills., at said Chicago and elsewhere; by one William R. Baker, of Chicago, Ills., at Dallas, Texas, and at Belleville, Ills., and elsewhere; by Stephen D. Carpenter, of Madison, Wis., at said Madison and elsewhere; by Sylvanus D. Locke, of Hoosick Falls, N. Y., at said Hoosick Falls and elsewhere.

Nineteenth. They deny that prior to the commencement of this

suit they have had not-ce of any alleged infringement of the letters patent named in the bill of complaint or have been requested to refrain therefrom, as averred in said bill.

Twentieth. And, further answering, defendants say that the complainants are not entitled to the relief prayed for in their bill of complaint; without this, that there is any other matter, cause, or thing in the said bill of complaint contained material or necessary for these defendants to make answer unto and not hereinbefore sufficiently answered, confessed and avoided, traversed or denied, is true; all which matter and things defendants are ready to
27 aver, -aintain, and prove as this honorable court may direct, and pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

PARKINSON & PARKINSON,
Solicitors and Counsel for Defendants.

SOUTHERN DISTRICT OF OHIO, STATE OF OHIO, } *ss:*
County of Hamilton, }

Abel Hoover and William Gamble, being duly sworn, depose and say that they are the defendants mentioned in the foregoing answer, and that they have read the same and know the contents thereof, and that the same is true of their knowledge except as to the matters therein cited to be on information and belief, and as to those matters they believe them to be true.

ABEL HOOVER.
WM. GAMBLE.

Subscribed and sworn to before me this 5th day of January, 1885.
FRANK W. BURNHAM,
Notary Public in and for Hamilton County, Ohio.

28 And afterwards, to wit, on the — day of ——, A. D. 188–, the following amended answer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Amended Answer.

United States Circuit Court, Southern Dist. of Ohio.

JAMES F. GORDON *et al.*
vs.
ABEL HOOVER and WM. GAMBLE, Partners as Hoover & Gamble. } In Equity. No. 3698.

Now come the defendants herein and, by leave of court, amend their answer *nunc pro tunc* as of the date of filing the same as follows, to wit:

By inserting at the end of the 11th clause thereof the following, to wit:

"No. 54672 to Joseph Barta, May 15, 1866.
No. 74836 to Christopher Lidren, Feb. 25, 1868.

English patent No. 2419 to Geo. O. D-oday, dated Sept. 21, 1866."

Also by inserting at the end of the 17th clause thereof the following, to wit:

29 "No. 159,506 to Marquis L. Gorman, February 9, 1875."

Also by inserting at the end of the eighteenth clause thereof the following, to wit:

"At Plano, Illinois, and elsewhere, by John F. Hollister, of said Plano; at Plano, Illinois, Austin, Texas, and elsewhere, by Lewis Steward, *at* said Plano; at Rockford, Illinois, by Marquis L. Gorham, of said Rockford, and O. R. Gorham, of Winnebago, Winnebago county, Illinois; all of which uses are known to the said persons, who respectively reside and may be found at the places above severally mentioned, except the said Marquis L. Gorham, deceased, the use by whom, among others, is known to the said O. R. Gorham."

Also by inserting after the nineteenth clause the following clauses, to wit:

"Twentieth. They say the machine shown and described in said letters patent No. 77878, and especially the combination claimed in the first claim thereof, in no way caused or produced any advancement or improvement in the art to which said patent relates or in any art whatsoever; that said machine and said combination as there shown never went into practical use, but was abandoned by the patentee and his associates in title under said letters patent;

30 that said letters patent were left neglected and no right asserted under or by reason thereof for many years after their issue and until these defendants and the patentees under whom they hold license and others who were strangers to the said letters patent No. 77878, without aid therefrom, developed the art by contriving harvester machines of substantially different organization and practically adapting them to the adjustments now charged to be an infringement, which adjustments were but the mechanical application to their said machines of expedients for moving the binding mechanism mentioned in patents long antedating the said alleged invention of Gordon; that it was not until these defendants and others not connected with the complainants or either of them had made practically useful in a separate and independent binder adapted as a whole to be attached to the harvester at such point as might be desired the old and long suggested and familiar idea of moving the binding mechanism to adapt it to the length of grain to be bound; that the said Gordon patent was asserted as of any value in the art to render subordinate thereto subsequently invented harvesters and binders which were of great practical value and owed no part of their utility or value to the said alleged invention and patent of Gordon, and that the said claim now made in behalf of said letters patent is inequitable, unjust, and oppressive.

31 "Wherefore these defendants submit to this honorable court that these complainants have no equity or right by reason of the said alleged invention and will rely upon this defense with the same effect as if they had pleaded the same specially to said bill.

"Twenty-first. They deny that complainants have cause of relief in a court of equity and say, especially with reference to letters

patent No. 77878, that complainants have plain, adequate, and complete relief in a court of law, and that if they are entitled to any relief thereunder this court is without jurisdiction therefor."

Also by changing the number of the twentieth clause of said original answer to "twenty-second."

ABEB HOOVER AND
WILLIAM GAMBLE,
By PARKINSON & PARKINSON,
Their Solicitors.

32 And afterwards, to wit, on the 17th day of Feb., A. D. 1885, the following replication was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Replication.

Circuit Court of the U. S. for the Southern Dist. of Ohio, W. D.

JAMES F. GORDON, JOHN H. GORDON, and DAVID M. OSBORNE
vs.
HOOVER AND GAMBLE.
No. —. In Equity.

33 The replication of the above-named complainants to the answer of the above-named defendants.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit of advantage of exception which may be had or taken to the manifold insufficiencies of said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant- is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

STEM & PECK,
Solicitors for Complainant-.

34 And afterwards, to wit, on the 9th day of July, A. D. 1886, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal U, p. 152.

Upon application of respondents Chas. H. Roberts, of Chicago, Ill., is appointed special examiner herein to take testimony.

And afterwards, to wit, on the 27th day of March, A. D. 1886, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal U, p. 344.

Upon application to the court & by consent the defendants have leave to file an amendment to their answer, and the same is filed.

35 And afterwards, to wit, on the 27th day of March, A. D. 1886, the following amendment to answer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Amendment to Answer.

Circuit Court of the United States, Southern District of Ohio.

JAMES F. GORDON *et al.*
vs.
HOOVER & GAMBLE. } In Equity. No. 3698.

Now come the defendants herein and, by consent of parties, amend their original answer *nunc pro tunc* by inserting between the word "Carpenter" and the words "of Madison, Wisconsin," wherever the same occur (and particularly in the 3rd line of the 8th page thereof), the following, to wit: "Now of Carthage, Missouri, but formerly."

PARKINSON & PARKINSON,
Sol. and Counsel for Defendants.

We consent to filing above amendment *nunc pro tunc* as of the date of original answer and subject to same replication.

STEM & PECK,
Sol's for Complainants.

36 And afterwards, to wit, on the 23rd day of April, A. D. 1886, the following deposition of Able Hoover was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Deposition of Able Hoover.

Circuit Court of the United States for the Southern District of Ohio.

JAMES F. GORDON, JOHN H. GORDON, and DAVID M. OSBORNE
vs.
ABEL HOOVER and WILLIAM GAMBLE, Co-partners under the Firm Name of Hoover & Gamble. } In Equity. No. 3698.

Examination of witnesses on behalf of the defendants under the 67th rule in equity, as amended, by agreement of counsel.

Present: Esek Cowen, Esq., for the complainants, and George B. Parkinson, Esq., for the defendants.

By request of parties it is ordered that these depositions be taken by question and answer.

ABEL HOOVER, a witness produced on behalf of the defendants, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by GEORGE B. PARKINSON, Esq., of counsel for the defendants, as follows:

37 Q. 1. State your name, age, residence, and occupation.

A. My name is Abel Hoover; age, 52; residence, Miamisburg, Ohio; occupation, manufacturing of harvesting machines.

Q. 2. Are you a member of the firm of Hoover & Gamble, defendants herein?

A. Yes, sir.

Q. 3. What type of machine is your firm manufacturing?

A. The Appleby binder.

Q. 4. Are you manufacturing under patents; and, if so, what patents?

Mr. COWEN: I object to the question as immaterial and incompetent and not the best evidence.

A. We are manufacturing under the patents which are owned by John F. Appelby and his associates; also the patents that are controlled by Mr. Lathrop as trustee and the Columbia and Higbee patents.

Q. 5. Are you manufacturing under authority from the owners of these *these* patents?

Same objection.

A. Yes, sir.

Q. 6. Is this authority in writing; and, if so, have you the contracts with you?

A. It is in writing and I have the contracts with me.

38 Q. —. Please produce them.

(Witness does as requested and produces the contracts.)

The papers produced by witness are here offered in evidence as "Defendants' Exhibits" "Appleby Shop Right," "Lathrop Shop Right," and "Columbia Release."

The originals of said exhibits having been produced, it is stipulated that copies of the same, also produced, may be marked and used in evidence with the same force and effect and subject to the same objections as the originals.

Counsel for complainants objects to the evidence as immaterial and incompetent; no legal proof in the case that the binders made by the defendants are made according to the description contained in any or either of the patents mentioned in the licenses, and no proof that the licensors had any legal authority to issue licenses under such patents.

Q. 8. Are you also manufacturing under patents belonging to your firm; and, if so, *the* patents?

Objected to as immaterial and incompetent and improperly calling for the opinion of that witness.

A. Yes, sir; patents issued to us in '82 and '83—No. 252,230, Oct. 3d, '82; No. 274,692, March 27th, '83, and No. 267,600, Nov. 14th, '82.

ABEL HOOVER.

39 "DEFENDANTS' EXHIBIT APPLEBY SHOP RIGHT."

In consideration of the sum of $4,000, four thousand dollars, to us in hand paid by Messrs. Hoover and Co., of Miamisburg, O., being a settlement of royalty on 800 Appelby binders built for the season of 1881 under a license from us now held by them, and a further consideration of their *surrounding* said license and all correspondence pertaining thereto and relinquishing all claim to the exclusive right of manufacturing the Appleby binders in certain territory granted to them by said license and correspondence, we, the undersigned, hereby grant, bargain, and sell to the said Hoover and Co., their successors or assigns, a full shop right to manufacture in the town of Miamisburg, Montgomery county, Ohio, the Appelby self grain-binder under all the binder patents issued, pending, or to be issued by the United States Patent Department in which we jointly have an interest.

This shop-right license to extend to the full end of the term for which said letters patent are granted, and to any and all extensions and reissues of said patents or either thereof which may at any time hereafter be granted or made.

And the aforesaid considerations are to be a settlement in full for all past and future use of any or all of said binder patents already issued or to be issued in which we jointly have an interest.

40 It is further understood and agreed that if at any time in future Hoover & Co. should elect to change their place of business and remove to Dayton, Ohio, they are to have the right to manufacture the Appleby binder there under this shop right to the same extent as they are now allowed to manufacture at Miamisburg, but it is expressly understood that they are not to manufacture in both places at the same time.

The said Hoover & Co. under this shop-right license have a right to manufacture as many of the Appleby self grain-binders as they deem best from and after the date hereof, and to sell them anywhere in the United States and Territories.

Given under our hands and seals this 29th day of September, A. D. 1881.

In presence of—

L. HOLDEN PARKER,
LOU. J. HOUCK,
Witnesses for E. D. Bright, J. F. Appleby, Gustavus Stone.
W. B. STONE,
E. T. ROBINSON,
Witnesses for Chas. H. Parker.

E. D. BISHOP. [SEAL.]
J. F. APPLEBY. [SEAL.]
GUSTAVUS STONE. [SEAL.]
CHAS. H. PARKER. [SEAL.]

41 The interlineation in foregoing, "their successors or assigns," made with our approval and consent, Oct. 10, 1881, in presence of L. Holden Parker.

J. F. APPELBY.
E. D. BISHOP.
GUSTAVUS STONE.
CHAS. H. PARKER.

"DEFENDANTS' EXHIBIT LATHROP SHOP RIGHT."

This agreement, made this 25th day of October, 1882, between William Lathrop, trustee, of the city of Rockford, Ill., of the first part, and Hoover and Co., of Miamisburg, O., a firm composed of Abel Hoover, Elizabeth Allen, executrix of the estate of Chas. R. Allen, and William Gamble, of the second part, witnesseth:

That whereas the McCormick Harvesting Machine Company, Norman C. Thompson, and Helen M. Graham did, by their certain deed of assignment, dated the 31st day of October, 1881, which is recorded in the Patent Office, at Washington, in Lib'r Q 27, p. 146, of Transfer of Patents, assign and set over unto said William Lathrop, trustee, their rights and interest in and to certain letters patent designated as follows:

No. 103,673, dated May 31, 1870, granted to George H. Spaulding.

No. 155,781, dated October 6, 1874, granted to Pascal and Newell Whitney.

42 No. 9670, reissue, dated April 19, 1881, granted to Joseph B. Greenhut.

No. 49970, dated September 10, 1865, granted to J. Behel.

No. 93165, dated August 3, 1869, granted to J. Behel.

No. 159,506, dated February 9, 1875, granted to M. L. Gorham.

No. 160,895, dated March 16, 1875, granted to M. L. Gorham.

No. 218,377, dated August 12, 1879, granted to H. M. Gorham, ex.

No. 233,089, dated October 12, 1880, granted to H. M. Gorham, ex.

No. 218,952, dated August 26, 1879, granted to T. M. Flenniken.

No. 229,993, dated July 13, 1880, granted to T. M. Flenniken.

No. 9490, reissue, dated Dec. 7, 1880, granted to John Richardson.

The interest so conveyed to said party of the first part in said patents numbered 103,673, 49970, and 93165, respectively, being a fractional interest in the same, and in the remainder of the patent above recited the entire interest.

And whereas the party of the second part is desirous of manufacturing harvesting and binding machines containing said

43 patented improvements at their shops at Miamisburg, Ohio, and not elsewhere:

Now, therefore, in consideration of the sum of fifteen thousand ($15,000) dollars to said party of the first part in hand pais as follows, to wit:

$7,500 cash and $7,500 in a promissory note maturing one year from the date hereof, the receipt of which is hereby acknowledged, the said party of the first part licenses and empowers the said party of the second part and their successors in business at the same place to manufacture at their shops in Miamisburg, Ohio, but not elsewhere, machines containing said patented improvements and to sell the machines so manufactured throughout the United States to the full end of the term for which said letters — or either or any of them are granted; and, further, in consideration as aforesaid, the said party of the first part hereby releases and discharges said party of the second part from all claims for past infringement of the said letters patent or either of them to the extent of the title above recited. The said party of the first part hereby covenants with and assures said party of the second part that he has full right and authority to make this shop right and release to the extent of the interest in said letters patent as above recited.

Provided, however, that if the party of the second part
44 neglects or refuses to pay at maturity their certain promissory note, bearing even date herewith, for the sum of seven thousand five hundred ($7,500.00) dollars, payable to the order of the said party of the first part one year from the date thereof, at H. Groby & Co.'s bank, in Miamisburg, Ohio, then this shop right and license shall be null and void.

WILLIAM LATHROP, *Trustee.*

"DEFENDANTS' EXHIBIT COLUMBIA RELEASE."

Whereas letters patent of the United States No. 57714, upon raking and binding attachments for reapers, were granted on the fourth day of September, A. D. 1866, to Marshall D. Higby and Dana L. Columbia;

And whereas said Columbia, on the sixteenth day of April, A. D. 1882, acquired and now owns an undivided half interest under said patent in a portion of the States, the Territories of the United States, including the State of Ohio, and in all claims growing out of infringements theretofore committed upon said patent in said States and Territories, and has also owned an undivided forty-one sixtieth interest under said letters patent in the remaining States and Territories of the United States since the eleventh day of February, A. D. 1880:

Now, in consideration of one hundred and twenty-five dol-
45 lars to me, the said Columbia, paid by A. Hoover and W. Gamble, composing the firm of Hoover & Gamble, of Miamisburg, Ohio, the receipt whereof is hereby acknowledged, I do hereby, in so far and as fully and entirely as my ownership will in law warrant and empower me, grant to said Hoover & Gamble a release and discharge of and from all liability under said patent growing out of the manufacture and sale by them of grain-binding harvesters.

Witness my hand, at Chicago, this 8th day of February, A. D. 1884.

DANA L. COLUMBIA.

Witness:
EDWARD S. EVERTS.

46 And afterwards, to wit, on the 11th day of May, A. D. 1888, the following stipulation was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Stipulation.

United States Circuit Court, Southern District of Ohio, Western Division.

JOHN H. GORDON *et al.*
vs.
HOOVER & GAMBLE. } In Equity. No. 3698.

SAME
vs.
BENJ. H. WARDER *et al.* } In Equity. No. 3897.

It is hereby stipulated that any evidence taken and any exhibits offered in behalf of either of the above-entitled causes may be, so far as relevant, *be* referred to in the other and treated as a part of the evidence therein as fully as if taken and offered therein.

PARKINSON & PARKINSON,
For Defendants.
ESEK COWEN, *For Complainants.*

47 And afterwards, to wit, on the 14th day of Jan., A. D. 1889, the following *prima facia* case was filed in the clerk's office of said court, clothed in the words & figures following, to wit:

United States Circuit Court, Southern District of Ohio. In Equity.

JAMES F. GORDON, JOHN H. GORDON, and DAVID M. OSBORNE
against
HOOVER & GAMBLE.

Testimony taken on behalf of complainants herein, pursuant to the annexed stipulation, before Adelbert Cronise, a notary public, as special examiner, at No. 50 Reynold's arcade, Rochester, N. Y., commencing Saturday, May 30, 1885, at ten a. m., and continuing from time to time as hereinafter noted.

Mr. George B. Selden appeared for complainants.
Mr. Robert H. Parkinson appeared for defendants.

United States Circuit Court, Southern District of Ohio. In Equity.

JAMES F. GORDON, JOHN H. GORDON, and DAVID M. OSBORNE
against
HOOVER & GAMBLE.

It is hereby stipulated by and between the counsel for the
48 respective parties hereto that the testimony herein on behalf of complainants be taken before Adelbert Cronise, of Rochester, N. Y., a notary public, as special examiner, at No. 50 Reynold's arcade, Rochester, N. Y., beginning Monday, June 1, 1885, at 10 a. m., and that on filing this stipulation an order may be entered *nunc pro tunc* as of this date, May 30, 1885.

GEORGE B. SELDEN,
Counsel for Complainants.
PARKINSON & PARKINSON,
Counsel for Defendants.

Complainants' solicitor offers in evidence U. S. letters patent No. 77878, issued to James F. Gordon May 12, 1868.

Same received in evidence and marked Complainants' Exhibit "Gordon '68 Patent."

Also U. S. letters patent No. 151,967, issued to James F. Gordon June 16, 1874, for improvement in grain-binders.

Same received in evidence and marked Complainants' Exhibit "Gordon '74 Patent."

Also U. S. letters patent No. 169,258, issued to James F. Gordon Oct. 26, 1875, for improvement in grain-binders.

Same received in evidence and marked Complainants' Exhibit "Gordon '75 Patent."

Complainants' solicitor also offers in evidence a certified copy of an assignment of an interest in the said "Gordon '68 patent" from James F. Gordon to Wm. Currie, Luther Card, David Currie, and Joseph F. Wilson, dated November 14, 1867, recorded April 15, 1868, in Liber E 10, page 467.

Same received in evidence and marked "Complainants' Exhibit A."

Also a certified copy of an assignment of an interest in the said "Gordon '68 patent" from Wm. Currie to Henry J. Chambers, dated February 12, 1868, and recorded April 15, 1868, in Liber E 10, page 468.

49 Same received in evidence and marked "Complainants' Exhibit B."

Also a certified copy of a power of attorney relating to said "Gordon '68 patent" from Luther Card, William Currie, David Currie, Joseph F. Wilson, and Henry J. Chambers to James F. Gordon, dated January 19th, 1869, and recorded March 25th, 1872, in Liber D 15, page 458.

Same received in evidence and marked "Complainants' Exhibit C."

Also a certified copy of an assignment of an interest in said "Gordon '68 patent" from James F. Gordon to J. H. Gordon, dated Jan-

uary 17, 1870, and recorded March 25, 1872, in Liber I 15, page 221.

Same received in evidence and marked "Complainants' Exhibit D."

Also certified copy of an assignment of an interest in said "Gordon '68 patent" from James F. Gordon to J. H. Gordon, dated January 22, 1872, and recorded March 25, 1872, in Liber I 15, page 222.

Same received in evidence and marked "Complainants' Exhibit E."

Also certified copy of an assignment of an interest in said "Gordon '68 patent" from James F. Gordon to Everard C. Eells, dated August 13, 1872, and recorded August 16, 1872, in Liber V 15, page 144.

Same received in evidence and marked "Complainants' Exhibit F."

Also certified copy of an assignment of an interest in said "Gordon '68 patent" from E. C. Eells to Angus C. Gordon, dated October 3, 1872, and recorded October 24, 1872, in Liber D 16, p. 33.

Same received in evidence and marked "Complainants' Exhibit G."

Also certified copy of an assignment of an interest in said "Gordon '68 patent" from James F. Gordon to Joseph M. Currier, dated October 22, 1872, recorded October 24, 1872, in Liber X 15, p. 451.

50 Same received in evidence and marked "Complainants' Exhibit H."

Also a certified copy of an assignment of an interest in said "Gordon '68 patent," from James F. Gordon to J. H. Gordon, dated December 17, 1872, and recorded May 5, 1873, in Liber U 16, p. 265.

Same received in evidence and marked "Complainants' Exhibit I."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from James F. Gordon to John H. Gordon, dated December 26, 1872, and recorded May 5, 1873, in Liber U 16, p. 267.

Same received in evidence and marked "Complainants' Exhibit J."

Also a certified copy of an interest in said "Gordon '68 patent," from Luther Card to Edward H. Valentine, dated October 15, 1874, and recorded October 19, 1874, in Liber P 18, page 12.

Same received in evidence and marked "Complainants' Exhibit K."

Also certified copy of a revocation of a power of attorney relating to said "Gordon '68 patent," from Luther Card to James F. Gordon, dated October 15, 1874, and recorded October 19, 1874, in Liber P 18, page 17.

Same received in evidence and marked "Complainants' Exhibit L."

Also a certified copy of a revocation of a power of attorney relat-

ing to said "Gordon '68 patent," from David Currie to James F. Gordon, dated October 27, 1874, and recorded October 31, 1874, in Liber O 18, p. 108.

Same received in evidence and marked "Complainants' Exhibit M."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from John H. Gordon and Angus C. Gordon to the "Gordon Self-Binder Harvester Company of Kalamazoo," dated November 17, 1874, and recorded November 23, 1874, in Liber R 18, page 197.

Same received in evidence and marked "Complainants' Exhibit N."

51 Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Henry J. Chambers to William Deering, dated October 27, 1874, and recorded February 9, 1875, in Liber W 18, page 214.

Same received in evidence and marked "Complainants' Exhibit O."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from James F. Gordon, Everard C. Eells, Joseph M. Currier, and Charles C. Colby to Enos B. Whitmore, dated January 23, 1875, and recorded April 30, 1875, in Liber I 19, page 5.

Same received in evidence and marked "Complainants' Exhibit P."

Also a certified copy of an assignment of an interest in said "Gordon '68 patent," from Enos B. Whitmore to Everard C. Eells, dated January 23, 1875, and recorded April 30, 1875, in Liber I 19, page 6.

Same received in evidence and marked "Complainants' Exhibit Q."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from William Currie to James F. Gordon, John H. Gordon, Joseph M. Currier, Charles C. Colby, and Everard C. Eells, dated March 11, 1875, and recorded May 15, 1875, in Liber E 19, page 316.

Same received in evidence and marked "Complainants' Exhibit R."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from David Currie to James F. Gordon, John H. Gordon, Joseph M. Currier, Charles C. Colby, and Everard C. Eells, dated March 8, 1875, and recorded May 15, 1875, in Liber E 19, page 317.

Same received in evidence and marked "Complainants' Exhibit S."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Enos B. Whitmore to James F. Gordon, dated January 23, 1875, and recorded February 2, 1876, in Liber A 20, page 308.

Same received in evidence and marked "Complainants' Exhibit T."

52 Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Joseph F. Wilson to James F. Gordon, dated October 20, 1875, and recorded February 2, 1876, in Liber A 20, page 309.

Same received in evidence and marked "Complainants' Exhibit U."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Everard C. Eells to Joseph M. Currier and Charles C. Colby, dated July 19, 1875, and recorded February 19, 1876, in Liber Z 19, at page 426.

Same received in evidence and marked "Complainants' Exhibit V."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Edward H. Valentine to Walter A. Wood Mowing and Reaping Machine Company, dated March 4, 1876, and recorded March 7, 1876, in Liber D 20, page 335.

Same received in evidence and marked "Complainants' Exhibit W."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Enos B. Whitmore to John H. Gordon, dated January 23, 1875, and recorded May 8, 1876, in Liber P 20, page 268.

Same received in evidence and marked "Complainants' Exhibit X."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from John H. Gordon to Cyrenus Wheeler, Jr., dated May 4, 1876, and recorded May 8, 1876, in Liber G 20, page 432.

Same received in evidence and marked "Complainants' Exhibit Y."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from John H. Gordon to D. M. Osborne & Co., dated January 1, 1877, and recorded February 3, 1877, in Liber G 21, page 324.

Same received in evidence and marked "Complainants' Exhibit Z."

53 Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Cyrenus Wheeler, Jr., to John H. Gordon, dated December 20, 1876, and recorded February 13, 1877, in Liber G 21, page 325.

Same received in evidence and marked "Complainants' Exhibit A A."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Joseph M. Currier, Hannah Currier, and Charles C. Colby to D. M. Osborne, dated May 15, 1877, and recorded May 28, 1877, in Liber T 21, page 115.

Same received in evidence and marked "Complainants' Exhibit B B."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from William Deering to James F. Gordon, John H. Gordon, J. M. Currier, C. C. Colby, and E. C. Eells, dated October 7, 1876, and recorded October 14, 1878, in Liber K 23, at page 56.

Same received in evidence and marked "Complainants' Exhibit C C."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Walter A. Wood Mowing and Reaping Machine Company to John H. Gordon, dated January 16, 1879, and recorded April 26, 1879, in Liber D 24, page 103.

Same received in evidence and marked "Complainants' Exhibit D D."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from D. M. Osborne & Co. to John H. Gordon, dated December 20, 1879, and recorded Feb'y 16, 1880, in Liber F 25, page 147.

Same received in evidence and marked "Complainants' Exhibit E E."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from E. C. Eells to D. M. Osborne, dated March 8, 1881, and recorded June 4, 1881, in Liber K 26, page 416.

Same received in evidence and marked "Complainants' Exhibit F F."

54 Also certified copy of an assignment of an interest in said "Gordon '68 patent," from J. M. Currier to Charles C. Colby, dated March 13, 1876, and recorded February 5, 1883, in Liber S 28, page 437.

Same received in evidence and marked "Complainants' Exhibit G G."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from Charles C. Colby to Hannah Currier, dated March 14, 1876, and recorded Feb'y 5, 1883, in Liber S 28, page 438.

Same received in evidence and marked "Complainants' Exhibit H H."

Also certified copy of an assignment of an interest in said "Gordon '68 patent," from James F. Gordon to C. Wheeler, Jr., dated May 1, 1876, and recorded May 8, 1876, in Liber P 20, page 270.

Same received in evidence and marked "Complainants' Exhibit I I."

Complainants' solicitor offers in evidence certified copy of an assignment from C. Wheeler, Jr., to John H. Gordon of all his interest in letters patent No. 77878, 151,967, 169,258, and others, dated December 20, 1876, and recorded February 3, 1877, in Liber G 21, page 325.

Said assignment received in evidence and marked "Complainants' Exhibit J J."

Complainants' solicitor offers in evidence certified copy of an assignment from John H. Gordon to D. M. Osborne & Co. of all his right in letters patent Nos. 77878, 151,967, 169,258, and others, dated January 1st, 1877, and recorded February 3, 1877, in Liber G 21, page 324.

Said assignment received in evidence and marked "Complainants' Exhibit K K."

Complainants' solicitor offers in evidence certified copy of an assignment from J. M. Currier, Hannah Currier, and Charles C. Colby

to David M. Osborne of all their right and interest in letters paten Nos. 77878, 151,967, 169,258, and others, dated May 15, 1877, and recorded May 28, 1877, in Liber T 21, page 115.

55 Said assignment received in evidence and marked "Complainants' Exhibit L L."

Complainants' solicitor offers in evidence certified copy of an assignment from D. M. Osborne & Co. of all of its right, title, and interest in letters patent Nos. 77878, 151,967, and 169,258 to John H. Gordon, dated December 28, 1879, and recorded February 16, 1880, in Liber F 25, page 147.

Said assignment received in evidence and marked "Complainants' Exhibit M M."

Complainants' solicitor offers in evidence certified copy of an assignment from James F. Gordon of all his right in letters patent Nos. 151,967 and 169,258 in the State of Michigan to John H. Gordon, dated February 9, 1881, and recorded February 12, 1881, in Liber K 26, page 96.

Said assignment received in evidence and marked "Complainants' Exhibit N N."

Complainants' solicitor offers in evidence certified copy of an assignment from John H. Gordon of all his right in letters patent Nos. 151,967 and 169,258 in the State of Michigan to the Gordon Self-Binding Harvester Company of Kalamazoo, Mich., dated February 9, 1881, and recorded February 12, 1881, in Liber K 26, page 98.

Said assignment received in evidence and marked "Complainants' Exhibit O O."

Complainants' solicitor offers in evidence certified copy of an assignment from James F. Gordon to John H. Gordon of $\frac{5}{24}$ths of letters patent No. 198,104, dated February 9, 1881, and recorded February 10, 1883, in Liber D 29, page 77.

Said assignment received in evidence and marked "Complainants' Exhibit P P."

Complainants' solicitor offers in evidence certified copy of an assignment from Enos B. Whitmore to Joseph M. Currier of an interest in letters patent Nos. 77878 and 151,967, said assignment being dated January 23, 1875, and recorded February 5,

56 1883, in Liber D 29, page 63.

Said assignment received in evidence and marked "Complainants' Exhibit Q Q."

Complainants' solicitor also offers in evidence the original assignment of an interest in said Gordon patents from James F. Gordon to D. M. Osborne, dated February 1, 1879.

Same received in evidence and marked "Complainants' Exhibit R R."

Also a model representing the invention shown and described in the first claim of the "Gordon '68 patent."

Same received in evidence and marked "Complainants' Exhibit Model Gordon '68 Patent."

Also a model representing the invention shown and described in the tenth claim of the "Gordon '75 patent."

Same received in evidence and marked "Complainants' Exhibit Model Gordon '75 Patent."

JAMES F. GORDON, a witness on behalf of the complainants, being duly sworn, testified as follows:

1 Q. What is your name, age, place of residence, and occupation?
A. James F. Gordon; 42 years of age. I reside in the city of Rochester, N. Y. My occupation is inventing improvements in combined machines for harvesting and automatically binding grain, building experimental machines and introducing the same into practical use.

2 Q. Are you one of the complainants herein?
A. I am.

3 Q. How long have you been engaged in your present occupation? And state briefly your connection with the invention of combined machines for harvesting and binding grain.

A. About 22 or 23 years; in fact, the invention and reduction to practical purposes of combined machines for harvesting and automatically binding grain and improvements thereon has been the principal work of my life. I commenced my first binder model in
1862. I commenced and built my first full-sized reaper and
57 automatic binder in 1864. I obtained my first patent for combined reaper and automatic binder May 12, 1868. Down to about the time I applied for my first patent above referred to I was without means or tools of my own, and consequently labored under great disadvantages, and in the spring of 1865 I was obliged to cease operations on my binder inventions for a time, for the reason that my father could not furnish me with the necessary funds to continue my experiments, and I went to St. Louis, where I worked for the Government, in the quartermaster's department, but while there I devoted all my spare hours to my binder inventions. The war coming to a close soon after my arrival there, I was obliged to seek other employment, and in October, 1865, I went to Kalamazoo, Michigan, thence to Detroit, where I finally obtained a situation at small wages in the shops of the Michigan and Indiana Bolt and Nut Company, and in the spring of '66 I went back to Kalamazoo and engaged in the drive-well business. While there I succeeded in making arrangements with a party to build a full-sized experimental machine and take out my patent. Our agreement was a verbal one, and, after working a short time under it, the other party withdrew on account of a misunderstanding, and I was obliged to complete the machine and carry on the business as best I could, my only source of revenue while working on it being the little I could make by driving a well now and then when I could find it to do. After completing the said machine, in the fall of 1867, I was obliged to dispose of certain interests in my invention to raise funds to enable me to build a model and apply for my patent. Soon after filing my application I came to Rochester, N. Y., and built another machine, which I had in practical operation in the harvest field during the harvest of 1868. Since then my whole time has been

occupied in inventing improvements in harvesting and binding machines and building experimental machines, with the exception of short intervals, when I have been obliged to cease operations for lack of funds. I believe I am the first to reduce grain-binders to such a state of practical efficiency that the manufacturers of harvesting machinery were induced to build them for the trade. The first licenses to build automatic binders taken by any manufacturers were under my patents, and I believe that all the successful manufacturers of grain harvesting and binding machines in the United States are to-day using some of my inventions in the construction of their machines, and I also believe the invention covered and claimed in the first claim of my patent of May 12, 1868, No. 77878, to be an indispensable feature in the construction of a practical self-binding elevating harvester, the said claim covering the important feature of mounting the binding arm and automatic twister on a frame which can be adjusted back and forth on the harvester for the purpose of placing the band centrally of the sheaf, whether the grain be long or short.

58

4 Q. Are you the inventor and patentee of the improvements in grain-binders described and claimed in the bill of complaint herein?

A. I am; of all of them. I have also applied for and taken out a large number of patents for improvements in harvesting and binding machines other than those named in the bill of complaint. I also have a number of applications now pending in the U. S. Patent Office.

5 Q. Did the first full-sized machine built by you in 1864 embody or contain the invention described and claimed in the first claim of your patent of May 12, 1868, No. 77878?

A. It did, and so also did my 1868 machine.

6 Q. What first directed your attention to the invention of machinery for binding grain?

A. At the time of commencing my first experiments I was living with my father on a farm in Caledonia, Livingston Co., N. Y. We always had difficulty in securing extra help to do the binding during the harvest season, and I conceived the idea of doing it by machinery, and soon after commenced experimenting.

7 Q. State whether or not you have had any litigation with reference to the inventions described in the said patents or any of them; and, if so, state briefly the history of such litigation.

59

A. I have. My associates and myself commenced a suit against C. H. & L. J. McCormick in October, 1880, in the southern district of New York, in which Messrs. Harding & Bennett were counsel for the defendants, which after various vexatious delays was ready for hearing in May or June, 1884, but on account of the death of C. H. McCormick, the only defendant served in the case, this suit was abated.

A new suit was commenced in the northern district of Illinois against the executor and executrix of the deceased defendant; we also commenced suit against the McCormick Harvesting Machine Company, in the northern district of Illinois, about June, 1882,

both of which suits have since been settled by the defendants and discontinued; we also commenced suit against Wm. Deering in June or July, 1881, which suit is still pending; recently we have commenced suits against various other manufacturers, including the present defendant; the suits commenced against C. H. & L. J. McCormick and the McCormick Harvesting Machine Company and Wm. Deering were under my patents of May 12th, 1868, No. 77878, and October 26th, 1875, No. 169,258; the new suits are on the same patents and my patent of June 16th, 1874, No. 151,967.

The suit commenced against Wm. Deering in 1881 was under my patents of May 12th, 1868, No. 77878, and September 11th, 1877, No. 198,104, October 26th, 1875, No. 169,258. We commenced and proved the infringement of those patents by the defendant in January, 1882, and some little time afterwards, before the defendant took any testimony on his side of the case, I was informed by Mr. D. M. Osborne, one of the associate owners of my patents under which the suit was brought, that he had agreed to let the matter rest until the suits we had commenced against the McCor-
60 micks were decided, and that Mr. Deering would settle with us at the same rate in case we recovered or settled with them, but in the meantime we discovered that Mr. Deering was infringing another of my patents, dated June 16th, 1874, No. 151,967, not recited in the bill of complaint served on him in 1881, and when we finally compromised and settled with the McCormicks he refused to account for any of the machines manufactured by him in which he had infringed the patent last above named, and we were obliged to amend our bill and take farther proof; therefore the delay. I was also informed by Mr. Osborne that he had a like understanding with various other manufacturers who were infringing my patents or some of them. The suit commenced against C. H. & L. J. McCormick, above referred to, was for damages under a contract, and the suit against the McCormick Harvesting Machine Co., commenced, as before stated, about June, '82, was for infringement of the same patents as are named in the bill of complaint herein.

Mr. Parkinson, for defendant, objects to so much of the answer as relates to the statements of others as incompetent.

8 Q. State whether or not the model offered in evidence herein and marked "Complainants' Exhibit Gordon '68 Patent" correctly represents the inventions described and claimed in your patent of May 12th, 1868.

A. It does.

9 Q. State whether or not the model offered in evidence herein and marked "Complainants' Exhibit Gordon '75 Patent" correctly represents the inventions described in your patent of October 26th, 1875, and claimed in the 10th claim thereof.

A. It does.

10 Q. Please state briefly the history of your efforts to introduce your grain-binder inventions into practical use during the years 1869 to 1874, inclusive.

A. After the harvest of 1868 and previous to the next harvest

season I built a number of machines on the same general plan
61 as my '68 machine, with a few slight variations, some of which were exhibited at fairs and some operated in the harvest field.

At the close of the harvest season of '69 I found myself in debt to the amount of $2,000 or thereabouts, and my associates, becoming financially embarrassed, were unable to furnish me with any more funds, and I was obliged to cease operations on my binder for a time and go to work to earn money to pay off the debt aforesaid. Some time in the winter of 1870–'71 I succeeded in making arrangements with another party to furnish funds to attach my binder to a Marsh harvester, as we concluded it would be easier to get manufacturers to take hold of it by attaching the binder to some well-known machine, and concluded the Marsh harvester, which elevated the grain over the drive-wheel to a receptacle where two men riding on the machine did the binding by hand, was the easiest one to make the attachment to, which I did before the harvest of 1871, and cut and bound considerable grain with it during the harvest season that year. In this machine the binding arm and twister were adjustable in the direction of the length of the grain. Some time during the winter of 1871 or spring of '72 I was obliged to sell another interest in my patent and improvements to obtain funds to carry on my business. Previous to the harvest of 1872 I completed 2 or 3 machines on the same general plan as the 1871 machine, which I had in operation in the harvest fields that season, 1872, and previous to the harvest of 1873 I built 2 or 3 more with some improvements over the 1872 machines, one of which I shipped to my brother in Michigan and one to Centralia, Ill., and from there to Bloomington, and from there to Iowa City, and finally to Faribault, Minnesota, cutting and binding in all with that machine that season about 200 acres of grain, I think. When in Faribault Mr. Lewis Steward, one of the firm of Gammon, Deering & Steward, of Plano, Ill., who were then manufacturing the Marsh harvester, which carried two men to do the binding by hand, came to see the machine work in the field,
62 and while there invited me to come to Plano, Ill., the next harvest and exhibit my machine, and before the next harvest season I built another style of machine, which was known as the reciprocator, and shipped it to Plano, where I commenced cutting with it about the 6th of July, 1874, and cut and bound with that machine in the vicinity of Plano during the harvest season nearly 200 acres of grain. After the harvest was over the firm commenced negotiations for a license under my binder patents, which resulted in a license from me and my associates to Gammon, Deering & Co., dated March 8th, 1875. After the date of said license and previous to the harvest season of 1875 the said firm of Gammon, Deering & Co. commenced to and built about one hundred and thirteen grain-binders under my patents, which machines were placed in the market for the harvest of 1875, and they continued to manufacture and pay me and my associates a royalty for the use of my patents for a number of years, and when Wm. Deering, as the successor of

Gammon, Deering & Co., refused to pay the royalty we commenced a suit against him, which suit is still pending.

THURSDAY, *April* 2, 1885—10 a. m.

Same appearances.

JAMES F. GORDON cross-examined by Mr. PARKINSON:

1 X. What became of the model which you say you began in 1862?

A. It was left in the garret in my father's house at the time I first left home, and was broken up, I suppose, by my younger brothers.

2 X. The time you left home referred to was when you went to St. Louis, was it?

A. Yes, sir.

3 X. Did you ever see that model after you left for St. Louis?

A. No, sir; I searched for it after I returned home, but was unable to find it.

4 X. Was that model ever completed as an operative model?

A. It was, so far as the binder was concerned, I believe; it is so long ago I do not just remember; I know that the binding mechanism was made adjustable; I never made a model in which that feature was omitted; I will say that I never made a model
63 previous to the time that my first binder patent was applied for that omitted that feature.

5 X. On what kind of harvesting mechanism did you mount the binder in this first model?

A. It was on a platform harvester—that is, the binder was mounted on the inner end of the platform next to the drive-wheel.

6 X. When did you finish that model, so far as it was ever finished?

A. I think in the spring of 1862.

7 X. When did you commence another model?

A. I think I commenced the next model soon after January, 1863, which was completed some time in the spring of that year.

8 X. How did the second model differ from the first?

A. In the first model the arm that placed the band around the bundle was designed to gather the grain across the platform and then to swing around and discharge the grain in the rear of the machine; in the 1863 model I used a rake to gather the grain across the platform to the binder, where the arm encircled it with the band and then swung around to discharge the bundle in the rear of the machine, the process of twisting the ends of the applied band taking place while swinging around.

9 X. What became of this 1863 model?

A. In the spring of 1865, when I left home and went to St. Louis, I took that model apart and packed it along with some tools that I had and another model, put it in my satchel, and at Buffalo I checked it to St. Louis. Somewhere on the route or after it arrived there these models and tools were stolen from the satchel, and I have never seen anything of them since.

10 X. The satchel reached St. Louis and was delivered to you there, was it?

A. It did and was delivered.

11 X. The model was missing from the satchel when it was delivered?

A. It was. I gave my check to one of the Government drivers at the arsenal where I went to, and when he delivered it to me the model was missing from the satchel, but whether it was stolen on the way or after it got there I can't say.

64 12 X. Were the other contents of the satchel missing?

A. The tools that I took along were also missing, but that was all.

13 X. Was the valise locked when it was checked?

A. It was.

14 X. Was it locked when it was received by you?

A. I am not positive whether it was or not, but I think it was.

15 X. When checked it had other contents than the tools and model, had it?

A. One or two shirts and a cotton handkerchief or two.

16 X. When did you next make another model of a grain-binder?

A. I commenced another model in the fall or winter of 1863, but after working on it awhile I came to Rochester, where I stayed for a couple of months or thereabouts, and completed the model early in the spring of '64. This was one of the models referred to that I checked to St. Louis in the spring of 1865.

17 X. How did it differ from the preceding model?

A. It had a rake to gather the grain across the platform to the binder, substantially the same as in the preceding model, but the binder arm only had a reciprocating motion and did not swing around to discharge the bundle after it was bound. This model is represented by the caveat so far as it goes and, I think, is the model from which the drawings in the caveat were made, if they were made from a model.

18 X. When did you make your next grain-binder model?

A. I made it during my spare hours while I was in St. Louis in the spring of 1865.

19 X. Was it the same as the one next preceding?

A. It had a rake that swept across the platform the same, but the driving mechanism of the rake was different. The main frame of the machine was made of metal instead of wood, as in the other models, and resembled my '68 machine somewhat. It was on the same general plan as the preceding model and the '68 machine.

20 X. What became of this '65 model?

65 A. When I returned to Rochester in the fall of 1867 I took that model apart and packed it in my satchel and brought it with me. I have parts of it now in my house and parts of it at my shop, which I can produce if called upon to do so.

21 X. Please produce and identify them.

A. I will do so this afternoon.

22 X. When did you next make a grain-binder model?

A. In the fall or winter of 1867, which was the one filed in the

U. S. Patent Office when I made my application that resulted in my patent of May 12, 1868.

23 X. When and by whom was the model in evidence as "model Gordon '68 patent" made?

A. I think it was made in the winter of 1880–'1, and by myself and Henry Schleber, and I think Wm. Gomm.

24 X. It was made about the time your first suits for infringement of this patent were commenced, was it?

A. It was.

25 X. What became of the first full-sized grain-binder built by you?

A. It was left in charge of Mr. Blair, at Mumford, N. Y., at the time I left home in the spring of 1865. It was pulled down by Mr. Blair, as he was crowded for room, but I gathered up what I could find of it on my return home, after an absence of nearly three years, and I have some parts now in my shop, at No. 10 South Water street, in this city.

26 X. It was never put together after your return home, was it?

A. No, sir; for the reason that I had made improvements on it before my return.

27 X. When did you finish building that machine?

A. Well, some time in the fall of 1864; I can't tell exactly; I made alterations on it, however, and worked on it nearly all the winter of 1864–'5; I changed the driving mechanism of the rake during the winter.

28 X. That machine was never used in the field, was it?

A. It was not.

29 X. What became of the next machine, the one which you say was completed in the fall of 1867?

66 A. It was shipped from Kalamazoo to Rochester soon after I applied for my first patent and was used as a pattern from which we built the '68 machine, the one referred to in my direct examination as being operated in the harvest field of 1868. After the '68 machine was completed this '67 machine was pulled down; parts of it were sold for old iron, and I think I have some parts of it at my shop, No. 10 South Water street.

30 X. This '67 machine was never put to any practical use, was it?

A. It was not completed in time for use in the field in the harvest of 1867. The only tests I made with that machine was by laying straw on the platform and turning the drive-wheel by hand to bind it. I concluded we had made the platform too narrow and some of its parts too weak for actual use in the field; therefore the reason I went on to make another machine before the harvest of 1868.

31 X. Was the 1868 machine ever sold?

A. It was not.

32 X. When was it taken to pieces?

A. I can't say exactly. It was left on my father's farm in Caledonia, and my younger brothers took it down, but just when I do not know.

33 X. When did you last see the '68 machine together?

A. I do not remember; I think in '69 some time.

34 X. Do you know of its ever having been used after 1868?

A. I think my younger brothers used it some in the harvest of 1869, but I am not positive.

35 X. How much was it used in the harvest of 1868?

A. It was not completed till near the close of the harvest, and on its first trial we found some of the parts too weak, as is generally the case with untried harvesting machines, and before I could replace the weak parts with stronger ones the wheat harvest was nearly over in this vicinity. We had a piece reserved on the farm of Archibald Renwick, of Caledonia, where its operation was witnessed by hundreds of practical men, who pronounced it
67 a perfect self-binder, nearly two hundred of whom voluntarily signed a certificate as follows:

"CALEDONIA, *August* 4, 1868.

"We, the undersigned, citizens of Caledonia and adjoining towns, having witnessed the performance of J. F. Gordon's new self raking and binding harvester upon the farm of A. Renwick on the 3rd and 4th of August, inst., do hereby certify that it bound every bundle upon that occasion neatly and securely, and that, while we regard the said machine as in no respect inferior to any of the reapers now in use, the 'binding device' is, in our judgment, perfect, and leaves nothing to be desired."

It was afterward operated that season in a field of heavy oats upon the farm of Dean brothers, in Caledonia, where it worked as satisfactorily as in the wheat field on Mr. Renwick's place; but just how much was cut and bound with it I can't say, for the reason that I was sick and not present.

Mr. Parkinson, for defendant, objects to so much of the foregoing answer as relates to the statements, certificates, and puffs of strangers and to the quotation from the complainants' advertising circular as irresponsive to the question and incompetent.

Complainants' solicitor offers in evidence the printed pamphlet from which the extract given in the last answer by witness was read.

Same received in evidence and marked "Complainants' Exhibit Gordon '68 Circular."

Objected to by defendants' counsel as incompetent.

36 X. When did you next build a machine after the plan of the 1868 patent?

A. Immediately after the close of the harvest of 1868.

37 X. Was this machine ever sold?

A. One of the machines built after the harvest of 1868 was shipped to Michigan, to my brother, John H. Gordon, who exhibited it
68 at the State fair at Detroit. Another was shipped to Quincy, Illinois, and exhibited at the Illinois State fair by my brother, A. C., and from there to St. Louis, where it was exhibited at the fair of the St. Louis Agricultural and Mechanical Association, and was

awarded the diploma for the most important invention patented within the three years then last past, and a premium of $100. The one exhibited by my brother at the Michigan State fair in Detroit September, 1868, was awarded a silver medal on self raking and binding harvesters; also special premium of diploma on binding attachment. I do not know whether my brother, John H., sold the one exhibited by him or no', nor do I know what became of the one sent to St. Louis.

38 X. When did you build any other machine after the plan of the '68 patent?

A. I fitted up a shop of my own in the latter part of the winter of 1868 and built a number of machines before the harvest of 1869—I don't remember the exact number—some of which were shipped to my brother, John H., in Michigan, and one of them was exhibited by him at the State fair in Jackson in the fall of 1869, where I was again awarded a silver medal and a special diploma.

39 X. State as nearly as you can how many machines of this 1868 pattern you have built and sold.

A. I am not a manufacturer. The machines built by myself were experimental and pattern machines. Some of the features of my '68 machine, and the ones I regarded as the most important, have been retained and embodied in all my subsequent machines, and I think all the manufacturers in the United States are now using some of the devices contained in my '68 machine.

40 X. When you state that some of the features of that machine have been retained by you and used by other manufacturers you assume, do you, that machines such as the defendant's contain some of the features of that '68 patent?

A. I assume that all machines in which the binding arm and twister are mounted on a carriage, said carriage being capa-
69 ble of adjustment on the harvester, embody in their construction the first claim of my '68 patent.

41 X. You assume, do you, that any binder which has the entire binding mechanism mounted in a rigid binder frame and that binder frame capable of being attached at different positions relative to the grain delivery of the reaper embodies the invention of the '68 patent, do you?

A. I do not claim to be an expert in patent cases. I have been in the habit of employing attorneys to write my specifications and experts to construe the claims in my patents as to their scope; but as I understand it any kind of a binder in which an automatic twister and binding arm are mounted on a frame, said frame being capable of adjustment on the harvester for the purpose of placing the band centrally around the sheaf, would infringe the first claim of my '68 patent.

42 X. Now, referring specifically to the type of machines shown in your '68 patent, please state how many of those machines were made and sold.

A. There were probably 8 or 10 of them made, but whether any of them were sold or not I do not know. I never sold any of them

that I remember, but my brother John H. may have sold some of the machines I shipped to him in Michigan.

43 X. Have any of that particular type been made since 1869?

A. No, sir; for the reason stated in my direct testimony, that I thought it would be easier to get manufacturers interested by attaching the binder to some well-known form of machine that was already introduced.

Adjourned to 2 p. m.

44 X. The machines made since that date have had the binding mechanism mounted in an independent binder frame adapted to be attached to harvesters with an elevating delivery?

A. Most of them have, I believe. There were a few "low-downs" in the market last year with an adjustable binder attached.

45 X. All the parties against whom you have suits for
70 infringement use a binder of the character mentioned in my last question, do they not?

A. They do, and some of them are building "low-downs" too.

46 X. Which of them are building "low-downs?"

A. J. F. Seiberling & Co. placed some in the market last year with an adjustable binder attached. Deering had several in the field last season; but whether he placed any in the market or not I do not know. I am informed that Whitely, Fassler & Kelly had some "low-downs" in the field last season, but I do not know that they had any on sale. Mr. John F. Appleby, the patentee of the so-called "Appleby binder," who is superintendent of the Minneapolis harvester works, against which company we have brought suit, is now experimenting on a "low-down" binder, as I am informed, and there seems to be a desire on the part of manufacturers to come back to first principles and do away with the heavy, cumbersome elevating machines.

47 X. The machine which you have put in evidence as representing the infringement of the defendants in each of the cases mentioned in your last answer has been of the character specified in cross-question 44, has it not?

A. They have. The machines will show for themselves.

48 X. In all the suits that have been brought under this '68 patent the expert witness testifying in your behalf has expressed the opinion that the defendants infringe the first claim only, has he?

A. I believe he has so testified.

49 X. Under what claims of your other patents here in suit has your expert witness expressed the opinion that the defendants in any other suits infringed?

A. The ninth claim of my patent, the "Gordon '74 patent," and the tenth claim of my '75 patent.

50 X. You have referred to a settlement with the McCormicks. Is it not a fact that the only suit against them in which any evidence was taken was the suit upon a contract?

A. I believe it is.

51 X. That contract included a patent for a reciprocating
71 binding machine, for which, upon an interference between

you and Charles B. Withington shortly after the contract was made, priority was awarded to Withington, did it not?

A. It did. I think there was but one claim of the patent that was in interference.

52 X. The settlement with the McCormicks included as a part of its terms the cancellation of that contract, did it?

A. I believe it did.

53 X. Such machines as the McCormicks had made, were made under claim of right under Withington patents and marked under those patents instead of yours, were they not?

A. I don't know that he marked them under any patents, but he ought to have marked them under my patents, as the fact that he settled with us was evidence that he was using them.

54 X. The settlement was for a fraction of what you claimed under that contract, was it not?

A. The compromise settlement included machines made under the contract, and also machines they claimed were not made under the contract, and for which we had brought suit for infringement.

55 X. You did not consider any concession you made in the compromise settlement any admission on your part that defendants were not liable for the full amount claimed by you, did you?

A. I don't think we did.

56 X. Who first took an interest with you in your grain-binder inventions or any of them?

A. Luther Card, Wm. Currie, Joseph Wilson, and David Currie, all of St. Louis.

57 X. These four took jointly a quarter interest in the invention in grain-binders, for which you were about to apply for patent, and the assignment was dated in November, 1867, was it not?

A. They did, and the assignment was dated in November.

58 X. The consideration of this assignment as recited in the instrument was $5,000, beside the advancement by them of all expenses to be incurred in procuring the patent?

A. I believe that was all, but they would never have got it
72 for that price if I had not been so poor and in need of money to pay for my board; at the time I sold this I was in debt $80.00 for my board, besides other expenses incurred while I was at work on my machine, and I had to have money to take out my patents. I afterwards paid Joseph Wilson, in 1874, for the interest he had in the patent, I think, about $5,000.00.

59 X. $5,000 was the consideration actually paid you at the time of the transfer to Card, Wilson, and the Curries, was it?

A. It was.

60 X. The patent referred to in this assignment was your '68 patent, was it?

A. It was.

61 X. When did you next part with an interest in this or any of your grain-binder inventions?

A. In the winter of 1870 or spring of 1871, I believe, to E. C. Eells; I think I assigned some territory in Michigan and Indiana to my brother John H. previous to that time.

62 X. What consideration did you receive for each of these assignments?

A. I did not receive any cash consideration from my brother. The consideration for which I sold Mr. Eells was that he was to furnish me with a Marsh harvester and pay me for my time and the expenses of making the attachment of my binder to the Marsh harvester, and paid for making the model and taking out the patent, after which he was to pay his proportionate share of all expenses connected with the prosecution of the business.

63 X. Do you remember how much you were paid for your time and services in making that attachment?

A. I do not definitely, but my impression is it was about $500 or $600, but whether that included the model and applying for the patent I do not remember; I think it did.

64 X. How much time did your making the attachment occupy?

A. I do not remember exactly what time I began; some time in the spring of 1871, and the attachment was accomplished before July.

65 X. Would you think it took two or three months, or more or less?

A. I should think it took me about three months; I think I could tell definitely by referring to my books.

73 66 X. Will you please bring your book at the next session?

A. I will if I have it, and I think I have.

67 X. When and to whom did you next dispose of an interest in your inventions or patents, and for what consideration?

A. I think in the fall of 1871 or spring of 1872, to J. M. Currier, of Ottawa, Ontario, or Currier and Colby, I don't remember which, for $15,000.00.

68 X. That consideration was paid you, was it?

A. It was, in cash.

69 X. What were the circumstances of Card, Wilson, and the Curries, to whom you sold an interest at St. Louis?

A. At the time I sold the interest I supposed that Card and Wm. Currie were well to do, in affluent circumstances; Joseph Wilson was reported to be worth some $30,000 to $50,000 at that time; David Currie was a man of nominal means; at the time I purchased the interest back from Wilson he was clerking in one of the departments in Washington, having lost all his property before that time; at the time that Card parted with his interest he was in indigent circumstances, and so were both of the Curries.

70 X. What were the circumstances of Currier, Colby, and Eells?

A. Currier was in good circumstances at the time I sold to him; Colby's means were nominal, I believe, at that time—at least, I so understood it; Mr. Eells was also a man of nominal means. Before Currier and Colby sold their interest to Osborne, Mr. Currier, the moneyed man among them, had failed in business.

71 X. Did you understand that the St. Louis parties made the investment as a speculation or for the purpose of manufacture?

A. I suppose they made the investment expecting to realize large

sums out of the manufacture of the machines. I expected they would furnish me money to manufacture machines for the market as soon as we were satisfied it would be policy to place them in the market; the moneyed men among them failed soon after making the investment.

72 X. How soon after making the investment did the
74 moneyed men among them fail?

A. I don't remember exactly, but I don't think they were as wealthy as I supposed they were at the time they made the purchase. I know that Mr. Card gave me an order on the Putnam Machine Co., of Fitchburgh, Mass., for such tools as I wanted to start the shop. Some time the latter part of 1868 I ordered a lathe and drill on the strength of it, which I understand was never paid, so I should judge that his getting close in money matters took place soon after the trial of my first machine in the harvest of 1868, but when he actually made the assignment I do not remember; Currie, King & Co. failed, I don't remember just when.

Mr. Parkinson objects to so much of the foregoing answer as relates to what the witness understood and the inferences he drew from his understanding as incompetent.

73 X. These St. Louis parties never built any machines under your patent, did they?

A. No, sir; they were not manufacturers of machinery.

74 X. Were Eells, Currier, or Colby manufacturers or were they speculators?

A. Mr. Eells and Mr. Colby were not manufacturers. I understood Mr. Currier to be a lumber merchant from Ottawa, Ontario.

75 X. None of these parties were manufacturers of machinery, were they?

A. Not that I am aware of.

76 X. On what farm in Faribault did you use the machine referred to in your direct answer 10?

A. We used it on a farm belonging to or worked by John Wood, who was a dealer in hardware and agricultural implements in Faribault; we used it on other farms in the vicinity of Faribault, but I do not remember the names of the owners.

77 X. Who was the party with whom you made arrangements to build your machine in Kalamazoo, Michigan?

A. Philander Anderson; he is now at 208 East 23d street, New York city.

78 X. How large was the farm on which you were living
75 at home, in Caledonia, from 1862 to 1865? I refer now to the farm owned by your father.

A. About 104 acres.

79 X. How much of it was under cultivation?

A. It was all of it under cultivation with the exception of about 15 acres of wood and swamp. We also worked one of the Wadsworth farms, containing about 200 acres.

80 X. The Wadsworth farm your father rented, did he?

A. Yes, sir.

81 X. The license to Gammon, Deering & Co., referred to in your direct examination, included several patents besides those here in suit, did it?

A. It did.

82 X. It gave them the right to use any and every feature of each of the patents embraced in it, did it?

A. They had the right to use any or all, and they were to pay the royalties so long as they used any of the features covered by any of my patents, as I remember it.

83 X. Did they afterwards surrender that license or obtain a cancellation of it?

A. Mr. Deering did after Gammon went out of the firm. He said he thought it would be cheaper to fight our patents than to pay our $5 royalty.

84 X. When was it cancelled, and when and where did Mr. Deering make the remark attributed to him in your last answer?

A. I don't remember the exact date, but it was in 1879 or 1880; I think it was in 1879. He made the remark in his office, I think, on Canal street, Chicago, about the time that he threw up the license. He said it to me and my brother, John H. Gordon.

85 X. Have you now the memorandum book which you mentioned yesterday as likely to show how much time you occupied in making the attachment of the binder to the Marsh harvester while under pay of Eells?

A. I have.

86 X. Does it show the time occupied?

A. The memorandum was written in lead pencil and is so blurred from being carried in my pocket that I am unable to tell.

76 87 X. Have you such remnants as you can find of your 1865 model; if so, will you produce them and have them marked by the examiner for identification "parts Gordon St. Louis model"?

A. I have and now produce them.

Stipulated by counsel that the same be produced upon the hearing herein and returned to the witness.

88 X. Can you state whether your 1867 machine had any mechanical means for shifting the binder arm and twister to adjust it to different lengths of grain?

A. I can't say positively whether I put the lever on that machine or not, but I think I did.

89 X. You have brought suits for infringement of the first claim of the '68 patent against manufacturers whose binders are not provided with any mechanical means for moving them to different positions with reference to the grain delivery, as well as against those who move the binder by means of a lever, have you?

A. We have brought suits against parties who made part of their machines with a lever to adjust the binder and part without the lever.

90 X. Is it not true that some of your suits for infringement of the first claim involve only machines in which no lever or other me-

chanical means is used for moving the binder to its different positions?

A. I think that all the parties against whom we have brought suits are now using the lever.

91 X. Do you state this of your own knowledge?

A. I know of my own personal knowledge that the Champion, the Deering & Co., the Empire, manufactured by J. F. Seiberling; the Minneapolis, the Plano, the Dennett machine that I saw here last year, and the one that we have as an exhibit in this case all have the lever on, and the Dennett Co. advertised the lever in their circular. I do not know of my own knowledge if the Hoover & Gamble machine has the lever or not, but I am informed it has.

92 X. Is it not a fact that in some of the suits which you
77 have pending for infringement of the first claim of this patent the only machine which you have put in evidence to represent the infringement and the one with reference to which your expert evidence has been taken or is about to be taken has no lever or other mechanical means for moving the binder to its different positions relative to the grain delivery?

A. I believe it is the case with the Esterly machine and the Plano machine.

93 X. Which of your models made prior to 1868 had a lever for adjusting the binder arm to different lengths of the grain?

A. I never made a model prior to 1868 but what had the lever on.

94 X. Of all your inventions in grain-binders embraced in your various patents which particular one would you consider as your most important invention?

A. I don't know as I can say; I have always considered the invention claimed in the first claim of my 1868 patent to be an essential feature to the practical working of a self-binding harvester.

95 X. You mean by your last answer that you would regard this invention embraced in the first claim of your '68 patent as the chief or most important of the inventions severally embraced in the various claims of your different patents?

A. I regard it as the most important; it seems to be the one they all have to use in the construction of their machines.

96 X. Do you consider the special mode of providing for the adjustment of the binder frame to different positions as a material part of the invention, or do you consider it practically immaterial so long as there is any means for placing the entire binder frame at different positions with reference to the grain delivery?

A. I consider the lever a convenience, but not necessary to adjust the binder, because the binder can be adjusted without it; as I said before, I do not claim to be an expert in construing patents as to the scope of the claims, and depend on experts to put a construction on the scope of the claims of my patents.

97 X. What machines now manufactured or that have
78 been on the market in the last dozen years effect the adjustment to different lengths of grain by sliding the binder arm and knotting mechanism to different positions longitudinally of the

rock-shafts on which they are respectively mounted, while these shafts remain stationary?

A. I think that all of the machines that are now in the market in which the binder is adjustable have the shaft mounted to move with the arm, substantially the same as in the machine made by me in 1864. In answering 97 X in the Dennett case, which was also stipulated into the Esterly record, I inadvertently referred to my caveat of 1864 instead of the machine made by me in 1864.

98 X. In your next question in that case you were asked as follows: "Do you mean to state that your caveat of 1864 shows the binder mounted in an independent frame, carrying the entire mechanism of the binder proper, which binder frame, together with its mechanism, is adjusted substantially in the manner as in the defendant's machine?" And you answered: "I think that is a question for my expert and not for me; as I understand it, the binder proper is all mounted on the frame and is adjusted substantially as in the defendant's machine, but the drawings of the caveat are somewhat abbreviated, for the reason that I was young at the time it was filed and did not know much about patent matters, and the attorney who prepared the caveat for me told me it was not necessary in the caveat to show all the mechanism as complete as in an application for a patent; the driving mechanism of the binder is no part of the binder proper, and, as I understand it, it is immaterial whether it is moved with the binder or not; the only object in moving any of it is to bring the binding arm and automatic twister or knotter in a position to bind the gavel centrally of its length, whether cutting long or short grain."

A. Yes; I do not consider the rock shaft which operates the binding arm, as shown in the caveat, a part of the binder proper any more than the drive-wheel is.

79 99 X. Now, please answer directly my preceding question. Are there, so far as you know, now on the market or have there been on the market to your knowledge in the last dozen years any machines which effect the adjustment to different lengths of grain by sliding the binder arm and knotting mechanism to different positions longitudinally of the rock-shafts on which they are respectively mounted while these shafts remain stationary? I am asking for the fact, not for your opinion as to the significance of it.

A. There is not on the market any that I am aware of now, but I do not remember whether there have been any on the market within the last dozen years.

100 X. Please state the different parties against whom you have pending suits under one or more of the patents involved in this suit.

A. The three Champion companies, at Springfield, Ohio; J. F. Seiberling & Co., Akron, Ohio; Hoover & Gamble, William Deering, Wm. Deering & Co., the Johnston Harvester Co., the Minneapolis harvester works, the Dennett Harvesting Machine Company, George Esterly & Son, the Plano Manufacturing Company, the St. Paul Harvester Company.

101 X. In all of them in which you claim infringement of the ninth claim of the '74 patent the alleged infringement consists in a

tilting board or boards hinged in respect to the table or apron, substantially as in the defendant's machine in this case?

A. Yes.

102 X. In some of the machines claimed as an infringement this tilting board is raised by rods attached to bell cranks and in some is simply held upright by a spring and lowered to dump the sheaf by means of discharger arms pressing upon the sheaf and thereby overcoming the action of the spring?

A. Yes.

103 X. Was the machine which you have mentioned as used by you at Faribault a wire binder or a twine binder?

A. It was a wire binder, and before a twine binder was ever perfected there have been thousands of wire binders manufactured and sold.

80 104 X. Do you know whether any wire binders have been manufactured within the last two or three years?

A. I don't think there have, but there are thousands of wire binders still in use, as I believe.

105 X. What was your father's first name?

A. Alexander.

Adjourned to—

JUNE 1, 1885.

Same appearances.

Cross-examination of witness, JAMES F. GORDON, by Mr. PARKINSON continued:

106 X. Can you now state when you began the work of applying the invention of your '68 patent to the Marsh harvester?

A. Since testifying in the Dennett case I have found an entry in my 1871 book, April 15th, as follows: "Paid freight on Marsh harvester, $9.63;" and I presume that is the date I received it, and that I commenced applying the binder to it soon after.

107 X. You were employed on this until some time in August, 1871, and paid by Eells for this work at the rate of five dollars per day and cash expenses during the time, were you not?

Objected to as immaterial.

A. I think I had the machine all ready to try in the field the fore part of July, but worked on it some after the first trials up to, perhaps, August, but I do not remember whether Eells paid me for my time while operating with the machine in the field or not, but I think he paid me at the rate of $5 *per diem* for the time I spent making the attachment and for castings, forgings, freight, lumber, &c., &c., and I also think now that he paid me at the same rate for making the model.

108 X. Does your patent of August 27, 1872, correctly show the machine made by you in 1871 and the method of applying it to the Marsh harvester as done at that time?

Objected to as immaterial.

A. It does not.

81 109 X. Have you not, in answer to a question about this patent in a suit on the same patents involved in this suit, answered: "It shows my first method of attaching to the Marsh harvester"?

Same objection.

A. I have; but in the preceding question you have asked me if my patent of August 27, 1872, correctly shows the machine made by me in 1871, as well as the method of applying the binder to the Marsh harvester — that time.

110 X. Wherein was the machine different?

A. The mechanism by means of which the gaveler was caused to semi-rotate intermittently was different in the full-sized machine, and the manner of hanging and raising and lowering the reel was different, and I believe the oscillating plate "I" was not on it, and when I first made the attachment the clamping jaws was different. I was only trying an experiment to see whether the Marsh harvester was a practical machine for delivering the grain to a binder, and was endeavoring to try the experiment as cheaply as possible, and the form of the Marsh machine was so different from the harvester I applied my adjustable binder to in 1867, 1868, and 1869 that I omitted the binder frame, having already a patent on this feature of adjustability. I did not deem it necessary to show it in the model.

111 X. How many grain-binders did you make in 1871, how many in 1872, and how many in 1873?

A. I did not make a complete grain-binder in 1871, as I used parts of one of the 1868 or '69 binders when I attached the binder to the Marsh harvester in 1871. In 1872 I built two or three. I am not sure that the third one was entirely completed, and now think it was not until a short time before the harvest season of 1873. I was in the habit of modeling over machines in making improvements from year to year, using such parts as I could make available in making changes. In 1873 I had three machines completed before the close of the harvest season; one of them was made for my brother in Michigan.

82 112 X. Had you made any more before the harvest of 1874; and, if so, how many?

A. I had; I made two, but the general plan of the 1874 machines was different from the 1871, 1872, and 1873 machines before referred to. The binding mechanism in the 1874 machines was mounted on a reciprocating binder frame which reciprocated back and forth on ways in a line parallel with the cutter bar. In this machine the twister and clamping jaws were substantially the same as used in my 1872 and 1873 machines, but they were operated differently. The first one of these machines completed before the harvest of 1874 was shipped to Plano, Illinois, where I commenced cutting the fore part of July, and I cut and bound with that machine in the vicinity of Plano, it was estimated, in the neighborhood of two hundred acres of grain. After operating the machine a few days in the vicinity

of Plano we altered the width of cut from five feet to ten feet, and cut and bound on Lewis Steward's place 13 acres of oats in five hours, and I now produce a photograph of the ten-foot machine in Lewis Steward's oat-field some time in July, 1874.

Complainants' counsel offers the said photograph in evidence.

Objected to as irrelevant and incompetent.

Same received and marked Complainants' Exhibit Photograph Gordon '74 Ten-Foot Binder.

113 X. Did either of the machines made by you in 1871, 1872, 1873, or in 1874, up to the harvest of that year, contain the invention embraced in the first claim of your 1868 patent?

Objected to as incompetent and immaterial.

A. In all the machines enumerated in the question provision was made for adjusting the binding arm and twister independently, and therefore I should say they did not contain the invention embraced in the first claim of my 1868 patent, as I understand it. All these machines were experimental, and I was endeavoring to get along as economically as possible, but in all pattern machines sent
83 to licensees provision was made so that the binding arm and automatic twister could be adjusted simultaneously. While experimenting with the machines in the field in 1871, 1872, 1873, and 1874 I took pains to pick out grain that would average as near the same length throughout the field as possible, so that I would not have to adjust the binding mechanism very often.

114 X. Just what provision was made in these machines for adjustment to different lengths of grain?

Same objection.

A. In the 1871, 1872, and 1873 machines the binding arm was locked in different positions of adjustment on its rock-shaft by mean- of a set-screw in the hub of the binding arm, and the frame contains ing the twister and its adjuncts was adjusted along its supporting timbers by removing a bolt or bolts and sliding the frame along into a new position and bolting it to its supporting timbers.

In the 1874 machines the binding arm was mounted on two rock-shafts which were rigidly secured to one another by two arms, and the binding arm was adjusted by means of a sliding piece having two eyes surrounding the actuating shaft, embracing either side of the hub of the binding arm. There was a short handle attached to the sliding piece which dropped into a notched plate to hold the arm in different positions of adjustment. The twister was hung between two parallel timbers and could be adjusted by pulling out a spring latch or pin and locked again by the same pin in a different position of adjustment.

115 X. When did you first apply any means for simultaneous adjustment of the binder arm and twister to the binder mounted on a harvester with elevated delivery?

Same objection.

A. When I built the pattern machine for the McCormicks, which was commenced about the fore part of November, 1874.

116 X. That was after the trial of the machine at London, Ontario, was it?

Same objection.

84 A. It was and was after I had licensed the McCormicks to build grain-binders under my 1868 and other patents.

117 X. Did this pattern machine furnished the McCormicks contain the sliding frame marked "W" in your 1868 patent?

Same objection.

A. No; not exactly; but it contained what I consider an equivalent for it. As my patent of May 12, 1868, was the first to show a binding arm and automatic twister capable of simultaneous adjustment for the purpose of placing the band centrally on the sheaf, I consider it a primary patent or invention and therefore entitled to a broad construction, and, in my opinion, although I do not claim to be an expert in construing patents, any binding arm and automatic twister that were both capable of simultaneous adjustment would be an infringement of the first claim of my 1868 patent.

118 X. Describe the provision made for adjustment in this pattern machine.

Same objection.

A. The frame of the twister and its adjuncts and the sliding piece which moved the binder arm were connected by two pitmans to arms on a vertical shaft which was provided with a hand lever and locking latch taking into notches in a stationary sector.

119 X. Did that machine furnished McCormicks contain the invention you understand to be embraced in the 9th claim of your 1874 patent or in the 10th claim of your 1875 patent?

Same objection.

A. It did not, I believe, as I remember it.

120 X. Have you ever known of any machine being manufactured for sale or being used in the field in which the provision for adjustment to different lengths of grain was the same as that in the pattern machine you furnished to McCormicks?

Same objection.

85 A. I don't know as exactly the same, but in the machine C. H. & L. J. McCormicks first built the binding arm and automatic twister were mounted on a frame which was adjusted back and forth in the direction of the length of the grain for the purposes stated in my 1868 patent by means of a screw which could be rotated by the driver by means of a sprocket wheel operated by a hand-crank or lever, which screw was also provided with a sprocket wheel with a chain passing around both of them; and the best evidence that the McCormicks were using my inventions is the fact that they have settled with us for the use of them.

121 X. The settlement referred to was a settlement which settled and released a contract including every claim of every patent on grain-binders which you had taken out at the time of making the contract or might take out thereafter for improvements thereon, and which contract bound them to pay the same rate of royalty if they used any features claimed in any claim of any one of such patents as if they used all of such patents, was it not?

Same objection.

A. The settlement released C. H. & L. J. McCormick for machines made under the contract, which, I believe, were wire binders, but they also settled with us at the same time the suit — brought against the McCormick Harvesting Machine Company for infringement of the same patents named in the bill of complaint herein, as I remember it, and the most, if not all, of the machines made by the McCormick Harvesting Machine Co. are of the same character as the machine built by defendant herein and for which this suit is brought for infringement of the 1st claim of my 1868 patent, the 9th claim of the June 16, 1874, patent, and the 10th claim of my patent of Oct. 26, 1875. This settlement was effected with the McCormicks after they had been represented by or counseled with such eminent members of the bar as Dickerson & Dickerson, of New York; Messrs. Harding & Bennett, Roscoe Conkling, Wm. M. Evarts, and

86 I have no doubt that it was by their advice that the suit for infringements against the McCormick Harvesting Machine Company was settled as well as the suit against C. H. & L. J. McCormick for damages under the contract.

122 X. Now, is it not a fact that it was a condition of the settlement of the contract suit against the McCormicks that the infringement suit brought against them for machines made since the firm was incorporated should be dismissed at complainants' costs, and was not that bill so dismissed?

Same objection.

A. I believe that both bills were so dismissed. They wanted us to let them down easy, and as the costs were but a few dollars we paid them out of the money we got from the McCormicks. I believe the amount was inside of ten dollars; at least, I am so informed by my counsel.

123 X. The suit against the McCormick corporation involved other claims than any involved in this suit, did it not?

A. The suit against the McCormick corporation involved, I believe, the 8th claim of my patent of September 4, 1877, No. 194,817, as well as the 1868 and 1875 patents. After the McCormick concern was incorporated they continued to build wire binders, I believe, for a year or two of the same kind built by them before incorporation. They then commenced to build the Appleby type of machine.

Adjourned to 7.30 p. m.

7.30 P. M.

Same appearances.

Cross-examination by Mr. GORDON continued:

124 X. This pattern machine sent the McCormicks was the first pattern machine furnished any licensee, was it not?

Objected to as incompetent and immaterial.

A. It was, I believe.

125 X. To whom did you next furnish a pattern machine?

Same objection.

A. Gammon, Deering and Steward.

87 126 X. When?

Same objection.

A. I shipped the machine to Gammon and Deering during the harvest of 1875 and which I exhibited there to them in operation in the harvest field, and during the harvest I telegraphed to Rochester for the patterns of said machine at the request of Gammon, Deering & Co., and they built some five, I think, before the close of the harvest. This machine that I shipped to them first in the harvest of 1875 was commenced before the pattern machine sent to the McCormicks was completed and is represented or illustrated in the drawings of my patent of Oct. 26, 1875, and described in the specification thereof, from which it will be seen that the binding frame was adjustable in combination with the binding arm and automatic twisting device.

127 X. When did the Osborne Company begin to manufacture under your patents?

A. They built a few during the harvest 1876 and before the date of their license, and they placed a few hundred in the market in 1877, since which time they have built thousands under my patents.

128 X. When did the Osborne Company become licensed under the Appleby patents and adopt the Appleby type of machine?

Same objection.

A. I do not know when they became licensed under the Appleby patents, but the first Appleby type of machine placed in the market by D. M. Osborne & Co. was in the harvest of 1883, I believe.

129 X. Were the machines built by the Osborne Company in 1876, 1877, 1878, and 1879 made in accordance with your 1874 patent here in suit in respect to the features recited in the 9th claim of that patent?

Same objection.

A. They were not that I remember of.

130 X. Did they adopt the tilting fingers or tilting board before they began to build the Appleby type?

A. They had no occasion to use tilting fingers on my ma-
88 chine they first commenced to manufacture, as the grain-receiver or binding platform was horizontal instead of inclined like the apron "G" in my 1874 patent.

131 X. Were the machines made by the Osborne Company during those years made in accordance with your 1875 patent in respect to the 10th claim thereof?

Same objection.

A. I have not been testifying in this case in the capacity of an expert, and that is a question for the expert we have retained rather than for me.

132 X. Can you not state whether those machines were made in accordance with this 1875 patent in respect to the features recited in the 10th claim of that patent?

Same objection.

A. The machines built by D. M. Osborne & Company embrace features shown and claimed in several of my patents; some of the features shown in my 1875 patent; also features that are shown in my patent- of Sept. 4, 1877, Nov. 26, 1878, May 12, 1868, July 15, 1873. The main features of the machines built by D. M. Osborne & Co. are contained and shown in my patents of May 12, 1868, Oct. 26, 1875, and Nov. 26, 1878, and it is a question for the expert and not for me as to whether (as I said before) the machines built by them embraced the 10th claim of that patent or not.

Answer objected to as irresponsive and irrelevant.

133 X. Now, if you are expert enough to express an opinion about that machine's containing the invention covered by various patents concerning which you have not been interrogated, why can you not answer the specific question that I have asked you?

Same objection.

A. It would not require an expert to answer the questions about the machines about which you say I was not interrogated, as it would be perfectly plain to any one by comparing the drawings of the patents with the machine built by Osborne & Company that it
89 contained a binding arm and automatic twister mounted on an adjustable frame, which can be adjusted forward and back in respect to the cutters and elevators for the purpose of placing the band centrally on the sheaf, and, by looking at the drawings of my patents of Oct. 26, 1875, and Nov. 26, 1878, that both contained a binding arm hinged to a vertical axial shaft and has a horizontally vibrating and vertically reciprocating movement in combination with a horizontally vibrating twister.

134 X. Were you not in a deposition taken a few days since asked whether these machines made by D. M. Osborne & Co. contained the invention set forth in the 10th claim of your patent of Oct. 26, 1875, according to your understanding of said claim, and did you not answer as follows: "According to my understanding I don't

think they did, but that is a question for Mr. Renwick, the expert whom I have retained to put a construction upon the claims of my patents"?

Same objection.

A. I did, but I was not testifying in that case as an expert and am not so testifying in this case. I do not wish weight attached to any opinions I may express or have heretofore expressed as to the scope of any of the claims contained in any of my patents in so far as they may be at variance with the opinions of Mr. Renwick, the able expert I have retained to construe my patents, as to the scope of the claims therein contained.

135 X. Was the adjustment to different lengths of grain in these Osborne & Co. machines effected by moving the binder frame with respect to the elevators?

A. It was with respect to the width of the elevators.

136 X. Have you stated in a former deposition that "in practice we have always found it necessary to adjust the binding mechanism with respect to the elevators"?

Objected to as incompetent and immaterial.

A. I have, but I have not signed that deposition yet, and I intend to correct it by saying in respect to the elevator and cutters, and have so stated to Mr. Bowman, defendant's counsel in that case.

90 137 X. Were you in 1868 and 1869 doing business under the name of James F. Gordon & Co.? If so, who was the "Co."?

A. I sold an interest in my invention to Luther Card, Wm. Currie, Joseph F. Wilson, and David C. Currie in the fall of 1867, before the patent was issued, and I suppose in one sense they were partners in the ownership of the patent, but I paid for the first machine made in 1868 myself, and after the harvest, when we had circulars printed illustrating my machine, I thought it would give a little more of a business air to the circulars to say that the machines were manufactured by James F. Gordon & Co. and so issued the circulars. Luther Card and Wm. Currie—one or both; I am not certain which—furnished me a small amount of money to start building a few machines the latter part of 1868 or fore part of 1869, but did not furnish me with all the money or half that I expended in 1869 in the construction of machines, and, as stated in my examination-in-chief, I was left to pay off the debts incurred as best I could, so that I can't really say whether there was a partnership or not. In one sense there was and in another there was not.

138 X. Did you keep up your caveat after 1864?

A. I did not, for the reason stated in my examination-in-chief, that I was so poor I was obliged to cease operations on my binder inventions, and in the spring of 1865 I started out in the world to earn money to enable me to continue my experiments on my grain-binder inventions and apply for my patent, and, as before stated, I went to St. Louis, where I was employed by the Government for a

short time in the quartermaster's department, but while there was sick a great portion of the time, which cost me nearly all the money I earned while in the employ of the Government, so that I had but a few dollars left with which to look up another situation, and before I did finally find employment I was obliged to subsist for a time on one meal a day, and I finally found a situation in a shop in Detroit, where I stayed during the winter of
1865-'6 for small wages, just barely enough to pay for
91 my board and washing and such clothing as I had to provide myself with, and in the spring of 1866 I went to Kalamazoo, Michigan, and engaged in the drive-well business, but was unable to save up money enough from the profits of the business to enable me to apply for my patent, and I was obliged to seek assistance by promising to give an interest in my invention to Philander Anderson in the fall, I think, or winter of 1866, and commenced on my machine in the spring or summer of 1867; but after working a few weeks with me Mr. Anderson withdrew from his contract with me on account of a misunderstanding, and in order to obtain funds I was obliged to part with an interest in my invention, and my patent was applied for, I think, some time in December, 1867, and that was as soon as it was possible for me to put any money in an application for a patent, as I had hard work to earn enough to pay for my board and provide myself with necessary clothing. At the time I sold the interest to Currie, Card, Wilson & Currie I was in debt to Mr. Caleb Eldred for my board to the amount of eighty dollars or thereabouts, and consequently had no money to apply for a patent until I succeeded in selling an interest in my invention.

139 X. Did the machine you exhibited at London, Ontario, in the fall of 1874 contain the reciprocating feature afterwards awarded to Withington on interference?

Objected to as immaterial.

A. It did.

Redirect by Mr. SELDEN:

140 R. D. Who owned the alleged Withington invention during the interference and the Withington patent after it was issued?

A. C. H. & L. J. McCormick.

141 R. D. Did the grain-binding machines made by the firm of C. H. & L. J. McCormick, and on which the settlement with you was made, contain or embody the features of a reciprocating binding mechanism on which you had your interference with Withington?

A. They did.

92 142 R. D. Can you produce the diplomas and medals referred to in question 10 of your direct examination?

A. I can, and do.

Same offered in evidence by complainants' counsel.

Objected to by counsel for defendant.

Same received and marked Complainants' Exhibit- St. Louis Fair Medal, St. Louis Fair Diploma, Michigan State Fair 1868 Medal,

Michigan State Fair 1869 Medal, and Michigan State Fair 1868 Diploma.

143 R. D. Referring to Complainants' Exhibit Gordon 1868 Circular, please state, if you know, when and where it was printed.

Objected to by Mr. Parkinson as incompetent and immaterial.

A. My brother got them printed in Kalamazoo, Michigan, in the fall or winter of 1868, I believe. We had pamphlets printed of the same description, with the exceptions of newspaper articles concerning the fairs and the diplomas and medals, immediately after the harvest of 1868, about August or September, here in Rochester.

144 R. D. Do you know what has become of the original certificate printed in the Exhibit Gordon '68 Circular?

A. I do not. My impression is it was lost at the printer's or destroyed by the printer.

145 R. D. Will you produce a copy of the newspaper printed at Faribault, Minnesota, containing an account of the operation of your machine about August, 1873?

Objected to by Mr. Parkinson as incompetent.

A. Yes. It is dated August 29, 1873, at Faribault, Rice county, Minnesota. The paper is "The Faribault Democrat."

146 R. D. How long has that paper been in your possession?

A. Since August 29th or 30th, 1873. I brought it with me when I returned from Faribault, after the close of the harvest.

147 R. D. Please read the extract referred to.

Objected to by Mr. Parkinson as incompetent.

Witness reads:

93 "Gordon self-binding reaper.—What it has done and what it will do; the greatest labor-saving invention of the age.

"On Saturday last, in company with Mr. John W. Wood and Dr. George Wood, we visited the old Faribault farm, on the road to Cannon lake, to witness still further the work of the Gordon self-binding harvester, which has been operating in the wheat fields near this city for two weeks past, and found it moving as rapidly as a team could be made to walk and doing its work as complete as it can possibly be done by either hand or machine labor; in fact it does its work perfectly, leaving a cleaner field than hand-raking, for every spear is gathered up and bound in snug, shapely bundles.

"This machine has cut and bound this season for Mr. Sargent, who works the Faribault place, thirty-five acres of wheat, and did the work in twenty-nine hours, and this time includes the numerous stoppings for the purpose of showing the machine to visitors who have thronged around it.

"This machine was invented by Mr. J. F. Gordon, of Rochester, New York, and he, with the assistance of Mr. C. C. Colby, of Stanstead, Canada, is engaged this season in experimenting with it to learn if there be any imperfections; and, if so, to correct them before it goes into the hands of the farmers.

"They commenced working the machine early in July at Centralia, Ill.; after finishing the harvest in that section they went to Iowa City, and from there came to Faribault, and now feel that they have given it a thorough trial, one that has discovered every imperfection, and another season they will be prepared to furnish a machine that will lack nothing.

"As we have already stated, the reaper is not particularly different from a Marsh harvester, and the binding attachment is exceedingly simple and can be comprehended and operated by a child; the band is of wire and fastened by a twist at the ends, stronger than any other portion of the band; the binding is done by
94 two iron arms that come together slowly, and the band is cut and twisted by simple slow-moving claws; the tightness of the band and size of bundle is regulated by the foot of the driver, so that passing from heavy to light grain need make no difference in the size of the bundles.

"The cost of the binding attachment will not be more than $150 and the wire bands will cost from twenty to thirty cents per acre; the bands will be made and put on wooden reels at the manufactories and can be inserted like a spool of thread in a sewing machine.

"Want of space, time, and ability prevent us giving a description of the machine, and as we presume that its work is what will interest most we will give place to the statements of Mr. T. N. Sargent and Mr. John W. Wood, for whom the machine has cut several acres of wheat:

"FARIBAULT, *August* 23, 1873.

"To the editor of the Democrat:

"Gordon's self-binding harvester has cut and bound for me this week on the Faribault place thirty-five acres of wheat in twenty-nine hours.

"To-day it cut and bound ten acres by measurement in seven and one-half hours.

"The cutting and binding were done in the most perfect manner and no grain wasted.

"I consider the machine a complete success and the greatest labor-saving invention of the age.

"T. N. SARGENT.

"The same machine cut and bound eighteen acres for Mr. John W. Wood that averaged twenty-two bushels to the acre, and Mr. Wood says that it left the cleanest field he ever saw; and, further, that from actual test he is assured that the machine will save at the very lowest estimate $1.00 per acre, as the following statement will show; it is generally understood that Mr. Wood is as prac-
95 tical as any farmer in this section and as well posted regarding the expenses of the harvest field. His figures are as follows:

"A first-class reaper will cut fourteen acres per day; this necessitates the employment of seven men; the cost is as follows:

"Team per day	$2 00
"Seven men, $3.00 each per day	21 00
"Board of help, 50 cents "	3 50
"Total cost of cutting and shocking fourteen acres	$26 50

"It has been fully demonstrated that the Gordon self-binding harvester will cut fifteen acres per day and at the following cost:

"Team per day	$2 00
"Three men, $3.00 each	9 00
"Board, 50 cents per day	1 50
"Cost of bands	4 50
"Total cost per fifteen acres	$17 00

"Here, then, is an actual saving of $9.00 on fourteen acres of wheat and an extra acre of wheat for a margin, and besides this it is the opinion of every farmer that has seen the machine work that the saving of grain will more than pay the cost of the wire for bands, which being the case we can calculate on a saving of just about $1.00 per acre by the use of the self-binding harvester, and when it is taken into consideration that the farmers of Minnesota this year are harvesting not less than 2,000,000 acres of wheat the item is one of importance to all of us and the invention one that must be hailed with delight, not because it is to make labor less remunerative and plenty, but because it will increase our resources, will increase our acres of wheat, because it furnishes means for harvesting.

96 "Some farmers offer objections to the binder on account of the wire bands, fearing it will impede thrashing, get into the straw and injure cattle, and we will therefore add that Mr. John W. Wood has just thrashed eighteen acres of wheat cut and bound with the Gordon machine and declares that the band does not in the least interfere. It is an easy matter for one man with a common pair of sheep-toe or pruning shears to cut and remove the bands sufficiently fast for the thrasher. In fact that is not as difficult as cutting the straw bands. If the straw is not wanted no harm arises from letting the band pass through the thrasher, as it does not break and goes among the straw whole.

"Messrs. Gordon and Colby are to be congratulated upon their immense success, for there is a fortune in the patent which they hold, not only for themselves, but for manufacturers and heavy grain-growers, while many farmers will receive no small benefit.

"They do not propose to put out any machines until they can do so with a guarantee that they can do their work without any trouble.

"It is impossible for them to tell now just what will be the cost of the binding attachment, but they assure us it will not be more than $100, which will place it within the reach of every farmer able to own a reaper of any description.

"We are promised a few machines here another summer, but it

will take two or three years to meet the demand sufficiently to bring them into general use. The gentlemen were exceedingly well pleased with Faribault and vicinity, and the idea that a manufactory of the self-binding harvester may be established here is not at all preposterous; may it be so."

Counsel for complainants offers in evidence the newspaper containing the extract read by witness.

Objected to by Mr. Parkinson as incompetent.

97 Same received in evidence and marked "Complainants' Exhibit Faribault Democrat."

Recross-examination waived.

JAMES F. GORDON.

Read, subscribed, and sworn to before me June 1, 1885.

ADELBERT CRONISE,
Notary Public and Special Examiner.

HENRY B. RENWICK, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by GEORGE B. SELDEN, Esq., counsel for complainants, as follows, to wit:

1 Q. What is your name, age, residence, and profession.

A. Henry B. Renwick; I reside in the city of New York; am 67 years of age, and by profession a civil and mechanical engineer.

2 Q. Have you had any special acquaintance with patents and patent suits, and especially in those relating to reaping machinery, and are you acquainted with such machines?

A. I began to be familiar with patents as a principal examiner in the U. S. Patent Office in 1848. After my resignation, in 1852 or '3, I have been frequently during each year up to the present time examined as expert in suits in which patents were in question. Some of these were suits involving reaping and mowing machinery. I have during that time drawn many patents and reissues, some of the latter involving mowing and reaping machinery. I have been consulted in many cases involving these machines, including those provided with binders; have had more than once to examine the whole state of the art in relation to binding mechanism; have visited reaping and mowing machine factories, examining machines in course of construction, and have also seen machines in operation in factories and in use in the field and at public trials.

98 3 Q. Have you examined letters patent No. 77878, issued to James F. Gordon May 12th, 1868, and letters patent No. 151,967, dated June 16th, 1874, and letters patent No. 169,258, issued to said Gordon Oct. 26, 1875, and do you understand the inventions therein described and specified, having special reference to the first claim of said '68 patent and the ninth claim of said '74 patent and the tenth claim of the '75 patent?

A. I have frequently examined office copies of each of the patents referred to in the question, and believe I understand the machines and inventions described therein, and have paid special attention

to the inventions referred to in the claims of the patents named in the question.

4. Q. Have you examined the models, Complainants' Exhibit "Model Gordon '68 Patent" and Complainants' Exhibit "Model Gordon 1875 Patent"? And, if so, state whether or not the said models correctly represent the inventions described and claimed in said Gordon '68 patent and the invention described and claimed in the tenth claim of said Gordon '75 patent.

A. I have examined the models and they do represent correctly the mechanism referred to in the claims enumerated in the question.

Complainants' solicitor offers in evidence a combined harvesting and binding machine, marked "Excelsior, Hoover & Co., Miamisburgh, O., No. 3385," and the same is received in evidence and marked "Complainants' Exhibit Defendant's Binder."

5. Q. Have you examined and do you understand the construction and operation of the said machine, "Complainants' Exhibit Defendant's Binder"?

A. I examined said machine on June 1, 1885, at 157½ West Main street, in this city; it is marked on the shield over the elevator on the divider "Excelsior, Hoover & Co., No. 3385;" and I understand the construction and mode of operation of the binding apparatus thereof, including the adjustable carriage or frame on which it is mounted.

6. Q. Please compare the inventions embodied in the said machine, "defendant's binder," with the inventions described and claimed in the said Gordon '68 patent and the said Gordon '74 patent and the said Gordon '75 patent, and state whether or not you find in the said machine, "defendant's binder," the
99 inventions claimed in the first claim in the said Gordon '68 patent and the ninth claim in said Gordon '74 patent and the tenth claim in said Gordon '75 patent, and give your reasons for any opinions you may express and allude to the state of the art if you find it necessary.

A. Long prior to the date of the Gordon patent of 1868 machines were known in which a gavel of grain which had been deposited on the platform was submitted to the action of a binding apparatus, which put a band around the gavel and converted it into a sheaf. These bands were sometimes a wire, sometimes a cord, and sometimes straw, and in many cases the band was put around the gavel and its ends secured by automatic machinery—that is, machinery which was put in motion by power from the horses which drew the machine. In such machines the grain falls upon the platform parallel, or nearly so, to the line of travel of the machine, with its butts lying but a short distance behind the cutting apparatus; this grain is moved sideways—that is, across the path of the machine and on the platform—and is there, by means of some appropriate machinery, bunched into a gavel and surrounded with a band, the ends of which are secured by some mechanism suitable for the purpose.

The stalks of grain vary much in length, often in different parts in the same field, and if the binding mechanism always occupied the same relation to the cutting mechanism—that is, if the contrivance for putting the band around the gavel were always at the same distance in the rear of the cutter bars—it is clear that the band would sometimes be in the right place—that is, in the middle of the sheaf—and at others either too near the heads or too near the butts of the grain. The invention referred to in the first claim of the Gordon '68 patent is for the purpose of obviating these difficulties, and in order to understand its advantages and its scope it is necessary to have some knowledge of the state of the art, which I have already partly given; in order to get rid of this difficulty
100 which I have before spoken of Mr. Gordon mounted the binding arm, as he calls it in his claim, upon the same carriage with a twister, this twister being for the purpose of uniting the ends of the bands—in Gordon's case wire—it being essential that this twister should always bear the same relation to the binding arm, because the binding arm carries the wire, surrounds the gavel with it, and puts the wire where it can be acted upon by the twister; this binding arm is represented in model Gordon '68 patent with a reel or spool mounted on top of it, and the twister is secured in such a position that the end of the binding arm can come into close relation with it when the binding arm is down. The carriage is represented in the model by a piece of metal painted drab color and a frame of brass, which carries the twister and its adjuncts, and is secured thereto. In the patent the binding arm is described as mounted on a rock-shaft, and the binding arm consequently moves up and down, upwards to stretch out sufficient wire for a band and downwards to put this wire around the gavel and carry the wire so that it may be acted upon by the twister, which twists two parts of the wire together so as to hold the band in place and confine the stalks together in a sheaf.

Now, this carriage is not stationary with respect to the cutting apparatus of the machine, but is capable of being slid or adjusted forwards and rearwards, carrying, of course, the binding arm and the twister and its accessories with it, the accessories of the twister being a contrivance for holding the end of the wire when the binding arm rises and a contrivance for cutting the wire so as to sever that portion which is around the gavel from the wire which is on the spool and led along on the binding arm. It is clear, therefore, that the carriage with the binding arm and the twister and its accessories may be set at different distances measuring rearward from the cutting apparatus, and may be so set as to put the band around the sheaf at different distances from the butts of the grain so that the band will occupy the middle of the sheaf, or nearly so; a
101 lever pivoted near the rear of the machine and near the driving wheel is connected with the carriage of the binding apparatus by a link, and a movement of this lever will move and set the binding apparatus as a whole at greater or less distance in rear of the cutting apparatus; as it is necessary that the binding apparatus should be held in certain positions in rear of the cutting

apparatus, the lever is provided with a lock latch, which takes in the teeth in a stationary sector, and by means of these the lever, and consequently the binding apparatus, can be held in any required position. The patent describes proper sliding connections, through the instrumentality of which the binding arm and twister can receive their proper motions automatically under any adjustment rearwards or forwards thereof, so that the rearward or forward adjustment of the carriage, binding arm, and twister does not affect or alter the required motion of these parts in putting a band around the gavel and securing it. I do not describe these sliding connections specially, because although necessary to the operation of the machine they are not included amongst the elements referred to in the first claim. Now, prior to the date of the Gordon '68 patent there existed the Watson, Renwick & Watson patent of 1851, No. 8083, which bound the sheaf with twine, the patent of Watson & Renwick of 1853, which also bound with twine, the patent to McPhetridge of 1856, which bound with wire and had a twister in it, the patent to Childs of March, 1858, which bound with twine, the patent to Sherwood of September, 1858, which bound with wire, the patent of Reynolds, February 12th, 1861, which describes a machine for binding with wire, but states that he can "attach a device to the jaws for tying a knot in a string so as to dispense with the use of wire without altering the rest of the apparatus." Among these prior patents I also find the patent to Behel, February 16th, 1864, and that to Behel & Hedges, September 6th, 1864, both of which have a bill, if it may be so called, which is a twister putting a turn in the cord, and the patent to Behel says, "Then the turning
102 of the tying bill in the direction of the arrow O, Fig. 9, causes it to twist the cord in a loop upon it, as shown in Fig. 11," and the patent to Behel & Hedges says, in the second column on the 5th page of the office copy, near the middle thereof, as follows: "We prefer to use cord as the binding material, but some other suitable material (wire, for example) may be used, provided the band-securing devices and the instruments for applying such material to them be constructed to suit the nature of the material employed."

By these patents I am instructed that cord and wire were known substitutes for each other for making bands, and that cord-tying and wire-twisting devices were also known substitutes for each other, all prior to the date of the Gordon patent of 1868, and, further, that a tying bill, which the patent states puts a twist in the cord and therefore was a twister, was likewise known prior to the date of the Gordon patent of 1868. Now, as I understand the first claim of the Gordon patent of 1868, it refers to the combination of several parts or their known substitutes or equivalents; these parts are—

First. The binding arm which puts the wire around the gavel and places it in such relation with the twister that the twister can act upon it.

Second. "An automatic twisting device," which words I understand refer not only to the precise twisting device in the patent, but to known substitutes or equivalents thereof.

The third element of the claim is the carriage capable of adjustment in the direction of the length of the grain—that is, rearward and forward—and by means of which the twister and the binding arm are so combined with relation to each other that they always continue in the same relation to each other, but are, nevertheless, capable of simultaneous movement along with the carriage to the same extent and in the same direction with each other. As some means are needed to hold the carriage and binding apparatus stationary after it has been adjusted, the court may include in
103 the claim the latch and notches which hold the carriage in any desired position. I do not understand that this invention resides in any special kind of binding arm or in any special kind of twisting device, as the claim calls it, but the invention really consists in mounting a binding arm and a twisting device in proper relations to each other upon a carriage which is adjustable rearwards and forwards in the length of the grain, the gist of the invention being the capacity of adjusting the binding apparatus as a whole with reference to the cutting apparatus and platform, so that the gavels may be bound near the center thereof, whether the stalks be long or short. In the "defendants' machine" which I saw at 157½ West Main street, there is a cutting apparatus and a platform on which the grain falls and means (an endless belt) for moving the grain sideways—that is, across the path of the machine—and this machine is provided with a secondary frame or carriage, which carries the tying apparatus as a whole and is adjustable forwards and rearwards by means of a screw or worm which engages with a rack formed upon a pipe or tube secured to the upper part of the adjustable binder carriage. This worm is revolved by means of a bevel gear attached to the lower end of an inclined shaft, which engages with another bevel gear mounted upon the worm shaft. The inclined shaft has a crank upon its upper end, which can be revolved by the driver when in his seat. When the crank is turned both bevel-gear wheels revolve and also the worm wheel (which is secured on the main frame), and this worm wheel taking into the rack moves the adjustable carriage backwards or forwards as may be desired, thus adjusting the carriage, the tyer and its accessories, and the reciprocating binding arm so that grain of different lengths may be bound at or near the center of the length thereof. At its upper end this adjustable carriage has secured to and making part of it a cylindrical rod (in fact, a gas pipe) which slides in hooks bolted fast to the main frame, and the whole carriage is attached to this rod, which has a rack secured upon it, as before stated; the lower end of this carriage is supported by a bracket secured to the main frame of the harvester, on which another gas pipe secured near the lower part of the carriage slides; consequently the carriage is adjustable forward and rearward.

This carriage has so connected with it that the two move together a reciprocating binding arm, which carries the cord, extends it so as to receive a gavel, then puts the cord around the gavel, and
104 finally brings the cord in range of a twisting device, this twisting device being substantially the same as that described

in the patent granted to Appleby February, 1879, and also substantially the same as the tying bill or twister described in the patent to Behel, February 16th, 1864, and Behel & Hedges, September 6th, 1864, and this twisting device is substantially the same as that which I now produce, the twisting device proper being the two pieces of iron which looks something like a bird's bill.

Complainants' solicitor offers in evidence the mechanism referred to by the witness, and the same is received in evidence and marked "Complainants' Exhibit Appleby Tying Bill."

This twisting device is so secured in the carriage of the defendants' machine that it always bears the same relation to the binding arm, whether the carriage be moved backwards or forwards, and the office of this bill or twisting device is to put a twist or turn in the two parts of the cord, and also to hold the two cords, so that when both are severed the ends may be drawn through the twist or turn. The accessories of the twisting or tying device, viz., a knife and cord-holder, are also mounted upon and slide with the adjustable carriage. In the defendants' machine there is a proper sliding connection between the binding mechanism and the mechanism of the main frame, so that it may be operated automatically and with equal certainty in any desired position to which the carriage and binding apparatus may have been adjusted, which will be specially described hereafter. The object of the whole contrivance in the defendants' machine is to place a band around the gavel and secure it near the middle thereof and irrespective of the length of the stalks which are being cut by the machine and form the gavel, and the machine does this because the binding arm and automatic twisting device are mounted upon an adjustable carriage; now this defendants' machine has in it—

First. A binding arm which reciprocates and puts the twine or cord around the gavel and places it in such relation to the twister that the twister can act upon it.

Second. It has an automatic twisting device which puts a twist or turn in the cord, and was, at the time of the grant of Gordon's patent, a known substitute for his twisting device when it was desired (as two of the patents which I have referred to state in substance) to use cord instead of wire.

105 Third. This machine has a carriage capable of adjustment in the direction of the length of the grain, and this carriage so combines the twister and the binding arm that they always maintain the same relation to each other and are also moved forward or rearward simultaneously by the movement of the carriage, both moving to the same extent and in the same direction.

Fourth. This machine has a worm wheel, as before stated, taking into a rack to move the adjustable carriage. This worm wheel is secured to the main frame, and when it stands still the rack and the carriage cannot be moved, because the thread of the worm takes into the notches of the rack and holds it fast. This worm wheel and rack were, prior to the date of the Gordon patent, known substitutes for a lever, link, latch, and notched sector for moving

bodies and locking them in position; consequently the defendants' machine has a substitute for Gordon's contrivance for holding the adjustable carriage in any desired position. Such being the facts with relation to both machines—that is, Gordon's and the machine made by defendants—it is my opinion that the latter contains the invention referred to in the first claim of the Gordon patent granted May 12th, 1868. In the defendants' machine there is arranged near the upper front end of the adjustable carriage a belt kept in constant motion. The acting surface of this belt is perpendicular to the inclined surface down which the grain slides, and the lower end of this belt can be moved forward and rearward. This belt, usually called a butter, is intended to act upon the butts of the grain and shove them rearward, so that stalks differing slightly in length may be bound about their centers; but I do not think that this butter would move the grain to any great extent or to an extent sufficient to meet all required needs, and the fact that the binding carriage carrying the binding mechanism is adjustable so as to provide for differences of length of grain is pretty good evidence that my opinion is correct.

The Gordon patent of June 16th, 1874, describes, like the
106 former one, a binding apparatus; in this machine the grain to form the gavel is elevated over the driving wheel, as as in the defendants' machine, and drops down into the position where it is to be bound. At the time that the binding arm marked "R" in Fig. 1 of the drawing is putting the wire around the gavel and the two parts of the wire are being twisted together the centre of the gavel is supported by the wire and reciprocating arm "V," which then underlies the gavel. These alone would not support the gavel horizontally, but it would be liable to tilt, and consequently get out of shape, and some of the stalks might perhaps slide out of the gavel. In order to obviate this difficulty Mr. Gordon contrived what the patent calls "balancing fingers (Z'.)" These balancing fingers are mounted on a rock-shaft, which rock-shaft is, as the patent states, secured along the lower edge of the board "O," and this board "O" is the lower part of the incline down which the grain slides after it has been elevated over the driving wheel. These fingers stick out from the rock-shaft and board and away from the driving wheel, and are rocked up and down by means of a proper cam and connection at proper intervals of time. Sometimes they are lifted, and when so lifted the end of the gavel and sheaf rest upon them so that the horizontality of the gavel which is being bound may be preserved; at other times, and after the gavel has been bound, the points of these fingers and consequently the whole fingers are permitted to drop, so that after the reciprocating piece "V" is removed the bound sheaf may drop out of the machine. These fingers are shown in their uppermost position in Fig. 4 of the drawings of the patent—that is, in the position where they support the ends of the gavel—and in their lowermost position permitting the sheaf to drop out, in Fig. 1 of the drawings. The patent also describes revolving gavelling arms which move downward after the fingers have dropped, and which would knock out or discharge the

sheaf if it did not drop out of the machine. The patent does not state the number of the fingers, but the drawings show that
107 there are four of them, two on each side of the band which goes around the sheaf, and the patent states that they "act to steady the butts and heads of the bundles or gavels while being bound," and that "the cam allows the fingers to drop and discharge the bundle." This machine of Gordon's, I have said before, has a binding arm which carries the wire and puts it around the bundle, and the ninth claim, as I understand it, of his patent of June 16th, 1874, is to the combination of—

First. The binding arm.

Second. The wire carried by it which underlies the gavel at the time that the balancing fingers sustain its ends; and

Third. The balancing fingers so constructed, the claim states, as to swing down and drop the bundle, and this phrase includes, of course, the vibratory motion of the fingers, because they could not well swing down unless they had been previously lifted, and as I understand the claim these balancing fingers are not claimed broadly, but only when attached to the lower edge of the apron, which apron, as I have before stated, is the inclined plane upon which the grain slides. In the machine made by the defendants herein the grain is elevated over the driving wheel and dropped to a place where the gavel is to be formed and it slides down an inclined plane. At the lower end of this inclined plane, and substantially in the locality where the balancing fingers of Gordon are attached, there are two boards attached to the lower end of the incline by means of hinged fingers, one of these boards being on each side of the binding arm, and each of these boards occupies the position of two of the balancing fingers of Gordon. These boards have arms secured to their lower side and projecting downward, so that an end view of the boards and arms is like the end view of the balancing fingers and arms, by means of which they are vibrated in Fig. 4 of the Gordon patent. To the lower ends of these arms in defendants' machine there are attached links, as shown in the same Fig. 4 of Gordon's, and those links
108 are vibrated by proper machinery, so that the boards stand up while the gavel is being bound, thus supporting the gavel in case it tilts, and are in their dropped or lowermost position when the gavel is dropped or (in case it sticks) is knocked out of the machine. In the defendants' machine there are two kickers or dischargers attached to one of the rotating shafts, being radial arms projecting from this shaft, and the mechanism is so timed that these arms strike the sheaf after it has been bound and after the balancing boards drop, so that these dischargers act at the same time and perform the same duty that is performed when a sheaf sticks fast by the gavellers of Gordon. This machine of defendants' has also a binding arm provided with cord, and the cord underlies the gavel while it is being bound, the construction and mode of operation of all these parts of defendants' machine being substantially identical with that of the corresponding parts described in the Gordon patent of 1874. In my opinion the boards are substantially identical

with the fingers. Both act in substantially the same way and produce the same effects.

I do not think I could escape infringement of the Gordon patent by stretching a piece of canvas between the two fingers on each side of the binding arm and securing it to the fingers, otherwise employing the precise structure of Gordon, and this is really what the defendants have done, and in my opinion the defendants, when they made or sold the machine I examined at 157½ West Main street, used the invention which is described in the Gordon patent of 1874 and referred to in the ninth claim thereof.

The Gordon patent of October 26th, 1875, No. 169,258, describes, like his patent of May 12th, 1868, an adjustable binding mechanism. In the machine described in this patent, which is represented by the model, "Gordon '75 patent," the whole binding mechanism—that is, the binding arm and the contrivances which secure the wire and cut it off—are driven by a single shaft, which is connected
109 with gearing mounted on the main frame of the machine. This shaft is the iron shaft which in the model extends the length of the line of draught of the machine—that is, perpendicular to the cutting apparatus—and this shaft in the model underlies the table upon which the gavel lies while it is being bound. On the end of this shaft there is a crank which, when the shaft revolves, puts the whole binding apparatus in motion, and this shaft is so secured to the adjustable carriage which carries the binding apparatus that it moves backwards and forwards with the carriage while the carriage is being adjusted. This shaft is revolved by means of a beveled wheel, the wheel being held stationary with respect to the main frame of the harvester in one direction by means of what the patent calls a box and in the other direction by a beveled driving wheel with which it is in gear. The tenth claim calls it a fixed box and the beveled wheel which I have just spoken of the driving gear. Now, as the shaft must slide with the adjustable carriage and the fixed driving gear must stand still, it is obvious that the driving wheel or gear cannot be keyed on the shaft, but that the shaft must be free to slide through it, while at the same time the gear must be so connected with the shaft that when the gear wheel revolves the shaft will revolve also. In order to effect this there is a long slot in the shaft, called a keyway in the patent, and a key fastened to the hub of the driving gear, the construction being such that the shaft may slide through the gear when the binding carriage is adjusted.

In consequence of this combination of parts all the binding gear is driven by a single shaft automatically, and it will always be driven with the same effect, whether the carriage be adjusted in one position or another in order to adapt it to different lengths of grain. Now, it was not new at the time of this patent to slide a shaft through a fixed gear, the two being connected by a key and keyway; but, so far as I know, Gordon was the first to combine movable bind-
110 ing mechanism—that is, binding mechanism supported upon an adjustable carriage—with gearing or its equivalent secured upon the main frame of the harvester by means of a fixed box

secured upon the main frame of the harvester, which held a gear i
a fixed relation to this frame while a shaft on the sliding fram
moved through this gear.

The tenth claim of the patent refers to this combination of part
and the elements enumerated in the claim are:

First. Fixed box "U," which is secured to the main frame of th
machine and prevents the fixed driving gear from sliding when th
shaft and adjustable binder carriage are moved.

Second. The fixed driving gear "G," which is the gear throug
which the driving shaft slides.

Third. The driving shaft "M," which gives motion to the whol
of the binding mechanism, and is arranged to slide through th
gear "G" when the movable binding carriage is moved, the sha
partaking of the motions of this adjustable carriage. The fourt
element of the claim is the movable binding mechanism—that i
binding mechanism mounted upon a carriage, which is adjustable i
the line of travel of the machine, so as to put the band aroun
gavels which differ in length.

The machine made by defendants has at the rear end of th
binder carriage a sprocket wheel—that is, a wheel whose peripher
is provided with pins, so that the wheel may be driven by a chain
this sprocket wheel is held fast, so that it cannot move forwards o
rearwards, with reference to the main frame, by means of a yoke,
curved arm of cast iron, which embraces a hub secured to this whee
and is fastened to the main frame. This yoke is the fixed bo
"U" of the Gordon patent, and performs precisely the same duty
while the sprocket wheel is a well-known substitute for the cog whee
in cases where a constructor prefers to communicate motion by mean
of a chain in lieu of a train of gearing. The sprocket wheel rest
upon a shaft, which has a long slot or keyway in it, and ther
111 is a key which prevents the wheel from turning without turn
ing the shaft, but at the same time permits the shaft to slid
with relation to the sprocket wheel. This shaft, which is the drivin
shaft "M" of the Gordon patent, is so fastened to the adjustabl
carriage which I have said this machine contains that the shaf
moves with the carriage when it is adjusted, the shaft then sliding
through the fixed sprocket wheel, and the whole of the movabl
binding mechanism of defendants' harvester receives motion from
this driving shaft. Now, the invention referred to in the tenth
claim of Gordon's patent is not, in my opinion, limited to an
special means of connection between this sliding shaft and the bind
ing mechanism, and inspection of defendants' machine and of the
patent will show that the connections are different, but the defend
ants' machine does contain each and all the elements referred to i
the tenth claim, combined in the same manner and operating t
produce the same effect.

Cross-examined by Mr. PARKINSON:

1 X. To what extent, if any, have you ever operated grain-binder
for practical purposes in the field?

A. I never operated one myself at all.

2 X. Have you ever seen a grain-binder constructed in accordance with the Gordon '68 patent in operation in the field?

A. No.

3 X. Have you ever seen a grain-binder constructed in accordance with the Gordon '74 patent or one constructed in accordance with the Gordon '75 patent in operation in the field?

A. No; neither of them.

4 X. Have you ever seen a full-sized grain-binder constructed in accordance with the Gordon '68 patent anywhere? By full-sized I mean of size designed for practical purposes.

A. No.

5 X. Have you ever seen such a machine constructed in accordance with the Gordon '74 patent or the Gordon '75 patent?

112 A. I think I have seen and examined a full-sized machine made like the Gordon '75 patent, but can't say where, and am not certain; I have never seen one like the '74 patent or a model of it.

6 X. In how many suits relating to grain-binders are you now retained by the complainants herein or any of them?

A. I don't know; all that they may bring under the Gordon patents within a year from last October, I think.

7 X. That includes all the Gordon patents, does it?

A. I think not; I think only the three patents in this suit, but am not certain; there may be a fourth which I have not seen.

8 X. You are also retained in behalf of one or more of the complainants in other grain-binder litigation, are you not?

A. No; I am retained against D. M. Osborne, one of the complainants herein, in a raker suit and against him under the Gorham binder patents.

9 X. The suits in which you are retained or have already testified in behalf of these complainants under the Gordon patents include one against the McCormick Harvesting Co., one against Wm. Deering & Co., one against The Minneapolis Harvester Co., one against Whitely, Fassler & Kelly, or the Champion Machine Co.; one against Hoover & Gamble, one against The Plano Manufacturing Co., one against George Esterly & Son, one against The Dennett Harvesting Machine Co., one against The St. Paul Harvesting Company, one against Warder, Bushnell & Glessner, do they not; also J. F. Seiberling & Co. and The Johnston Harvester Co.?

A. I was examined in the suit against McCormick under a former retainer in rebuttal only. I have been examined in cases against Deering and Deering & Co.; also in cases against The Minneapolis Harvester works, The Johnston Harvester Co., J. F. Seiberling & Co., Dennett Harvesting Machine Co., George Esterly & Son, Plano Manufacturing Co., and Warder, Bushnell & Glessner.

10 X. In adjusting the machine shown in the Gordon '68
113 patent to different lengths of grain the binder arm slides along the shaft on which it oscillates and the knotting mechanism moves along the splined shaft by which it is operated, the carriage upon which the knotting mechanism rests serving to propel at the same time the binder arm along its shaft, does it not?

A. In adjusting the Gordon '68 machine the binder carriage is moved, carrying with it simultaneously to the same extent both the binder arm and the knotting device or twister, and during the motion of the carriage the binder arm slides along its actuating rock-shaft and the twister over its actuating splined rock-shaft, but this splined shaft drives the twister through the intervention of four cog wheels, three of which slide with the carriage and twister or knotting mechanism. I mean by this to answer the question "yes," but prefer to state what I understand to be the exact operation of the parts.

11 X. The adjustment changes the position of the binder arm and knotting mechanism with reference to other parts of the binding mechanism, does it not?

A. No: the other parts of the binding mechanism are the wire-holding device and the knife, and they move simultaneously with the knotting device and the binder arm.

12 X. You would then consider the rock-shafts by which the movements of the binder mechanism are controlled and the mechanism by which the oscillation of the knotter shaft at the proper moment with reference to the movement of the binder arm and the rake as no part of the binding mechanism of the grain-binder, would you?

A. Yes; they are no parts of the binding mechanism, any more than the driving-wheel is; they are the devices by means of which motion at proper time is communicated to the binding mechanism.

13 X. Without them the machine would be incapable of operation as a grain-binder, would it not?

A. Yes, and such would be the case if the driving wheel were omitted, unless some other train of motion were substituted in their place.

14 X. Without these parts you would have no organiza-
114 tion by which the binder arm and the knotting mechanism would co-operate to perform any office whatever, would you?

A. You would not.

15 X. In the adjustment of the binder arm and knotter to different lengths of grain as effected in the '68 patent their position with reference to the mechanism by which the rock-shaft of the knotter is directly oscillated and with reference to the rake and the binding table or platform as well as with reference to the rock-shafts which actuate the knotting mechanism and the binder arm respectively is changed, is it not? In other words, the movement of the knotter and binding arm is relative to the above-named parts which remain stationary, is it not?

A. In the adjustment of the binder arm and knotter their position is altered with reference to the mechanism (the chain pulley and spring) which directly oscillate the knotter rock-shaft. They move forward and rearward with reference to the rake and also with reference to the cover (a piece of brass painted red), which is the piece, I suppose, you mean to indicate by the words "binding table." In one sense they move with reference to the rock-shafts of the binder arm and knotter—that is, lengthwise of those shafts—but they do not change their position with reference to those shafts in

such a manner that they cannot be operated by them, because those shafts in all positions of the binder carriage are effective, the one in moving the binding arm directly and the other in moving the twister or knotting device through the intervention of the cog wheels and shafts, which are mounted on and travel with the carriage.

16 X. In the defendant's machine there is a distinct frame for the binder, in which are mounted the knotting mechanism, the binder arm, the packers, the binder table, and all other parts necessary to insure the proper co-operation of the knotting mechanism, the binder arm, and the packing mechanism, is there not?

A. I suppose by binding table you mean the inclined plane or apron down which the grain slides, and, with that understanding, I answer "yes."

115 17 X. The adjustment to different lengths of grain, of which you have spoken as existing in the defendant's machine, is effected by moving this entire binder frame, with all its contained mechanism, with reference to the elevator which delivers the grain from the reaper to the binder, is it not?

A. Yes, and also with reference to the cutting mechanism and the raking mechanism.

18 X. In the defendant's machine the adjustment cannot be effected without moving the entire binder frame with all its contained mechanism, can it?

A. That is so.

19 X. In the particulars named in the last two questions all the machines which you have examined as representing the defendant's manufacture in the various suits in which you are or have been retained under the patents here in suit have been substantially the same, have they not?

A. Yes, with the exception, perhaps, of the McCormicks'. I do not remember exactly how the mechanism for driving his binding mechanism as a whole was constructed.

20 X. The defendant's machines have differed somewhat among themselves in respect to the particular means for hanging the binder frame upon the reaper and the particular means for moving the binder frame to its different positions, have they?

A. Not materially. They all, so far as I remember, had a gas pipe secured to the top of the frame, which slid in hooks or eyes attached to the top of the main frame. Some of them were supported at the bottom by another gas pipe, which slid upon brackets secured to the main frame, while two others, I think, had segmental wheels attached to the bottom of the adjustable binder frame, and their fellies ran on a ledge or shelf attached to the main frame. All but two, I think, locked the adjustable carriage in the required position by means of a latch and notched sector. One of the others locked it by means of a pressure screw, and another of them, I think, by a U-shaped clamp. Two of them, if I remember

116 right, had no levers for moving the adjustable carriage, and the others had such levers or their equivalents, shafts, a pinion, and a rack. In the McCormick machine, if I remember

right, the adjustable carriage was moved by a lever or hand wheel acting on a screw.

21 X. You regard the various constructions referred to in your last answer as all infringements of the first claim of the "Gordon '68 patent," do you, and in all the suits in which you have thus far testified upon the subject of infringements you have expressed the opinion that the defendant's machine infringed this claim, have you?

A. Yes.

22 X. You do not regard the lever, or any mechanical means for propelling the binder frame to its different positions as an essential element of their claim, do you?

A. That is so. I left the lever out when enumerating the elements of the claim.

23 X. The claim makes no mention of locking the binder arm and twister in their several positions, does it?

A. In the patent the binder carriage is locked and the locking the carriage retains the binder arm and twister in their proper positions. There are no words in the claim referring directly to the locking contrivances.

24 X. In which of the patents prior to 1868 with which you are familiar is mention made of the adjustment of grain-binding mechanism with reference to passing the cord around the gavel at the proper distance from the butts?

A. In the patent to Renwick & Watson of 1851 there is described a means for making the platform of different lengths, measuring from front to rear, and of taking out the cutter bar and moving it backward, so that the cutter bar occupies a different position with relation to the binding apparatus, and there is a statement in the patent in these words: "In place of making the cutting apparatus adjustable with reference to the binder it may be advantageous in some cases to make the latter adjustable with respect to the former;" but there is no description of how this is to be done in the
117 machine, or that the binding apparatus is to be adjustable with its carriage or without it, or of any way of carrying out the suggestion. In the patent to Sherwood, September 14, 1858, there is described a binding apparatus which is a hand binder, not automatic, it being necessary for the driver first to move the binder arm to encircle the gavel with the wire and then shifting his hand to a crank, by means of which he operated the twister. This twister and binder are mounted on opposite edges of a sort of gutter, called in the patent a concave, and the patent has in it the following statement: "The twisting apparatus and its attachments may be made adjustable on the concave for the purpose of bringing the apparatus to about the center of the bundle, whether the straw be short or long. The wire-carrier, of course, must be similarly adjustable so as to act with the twisting and cutting contrivances."

25 X. Do you know who drew the specification of the Watson & Renwick or of the Watson, Renwick & Watson patents?

Objected to as immaterial.

A. No; I suppose it was drawn by my brother, E. S. Renwick, and Watson.

26 X. E. S. Renwick was at that time an expert in mechanics and had had some experience as a witness in patent cases, had he not?

Same objection.

A. He was an expert in mechanics, but whether he had had any experience as a witness or not I can't remember. He was engaged in soliciting patents with Watson.

27 X. Do you know whether any machine made on the plan of the Gordon 1868 patent has ever gone into practical use?

A. Not of my personal knowledge.

28 X. In a machine constructed in accordance with that patent, how far back of the sickle would the butts fall on the platform?

A. I don't know; as far as they usually do in machines having a similar cutting apparatus and reel, I suppose.

118 29 X. Is it your opinion that any grain-binder which has a binding arm that will carry the cord or wire around the gavel and bring it to the knotter, and this binding arm and knotter mounted in the same frame, so that any adjustment of that frame would carry both binder arm and knotter with it, preserving them in the same relation with each other, and which has this binder frame capable of adjustment with reference to the main frame so as to receive the grain at the proper point for encircling the gavel, whether the grain be longer or shorter, and in which the binder frame is adapted to be by any means firmly fastened in its various adjustments, would fall within the scope of the first claim of the '68 patent?

A. I can't answer any questions as to machines that I have not seen. The machines that I have seen which would come within the definition of the question are, in my opinion, infringements of that first claim.

30 X. Do you not think of any conditions other than those referred to in the last question which would be necessary to constitute a machine an infringement of that patent?

A. No; I have not thought of other conditions; I only repeat that I cannot answer as to machines that I have not seen.

31 X. You would not think that the question of infringement would be affected by the fact that the particular knotting mechanism used or the particular mode of mounting and operating the binding arm was of more recent invention than the Gordon '68 patent?

A. I can't tell whether it would be or not. I must see the machine, and then I will give you the best opinion I can.

32 X. Would the knotting mechanism of the Gordon '68 patent be practically operative where twine was substituted for wire as the binding material?

A. No; it would not.

33 X. In your testimony in suit against the Johnston Harvester Co. did you in your cross-examination express the opinion that the

twisting hook had capacity to grasp and hold the wire and
119 prevent its slipping or sliding, and did you subsequently find that the specification of the patent stated that the wire was freed from the twister and described a construction that would not prevent the wire from slipping or sliding upwards?

Objected to as incompetent and immaterial.

A. Yes; I did, but you have omitted to state what appears in the testimony, viz., that when I made the first answer I had no eye-glasses and could not examine the patent or the model, and that a correction was made by myself after receiving my eye-glasses from the mender.

34 X. In the Gordon '68 machine is the rake an essential part of the mechanism for effecting the binding of the grain?

A. No; it places the gavel in a place where it can be bound, as the packers do in the defendant's machine; the rake is no part of the binding mechanism.

35 X. In order that the binder shown in the Gordon '68 patent be made complete or practically operative as a binder is it not necessary to have the rake or its mechanical equivalent as well as the binder arm and knotting mechanism?

A. The binder cannot act to bind the gavel unless there is the rake or some other instrumentality, whether an equivalent or not, to put the gavel in place, but the rake is no part of the binding mechanism.

36 X. The rake is essential to the operation of the precise machine described in the patent, is it not?

A. Yes.

37 X. Do you find in the defendant's machine any element which you would consider the mechanical equivalent of the rake in the Gordon '68 machine; and, if so, what?

A. No; there is no mechanical equivalent of the rake in all its functions, but there are devices which perform all its duties, namely, the horizontal belt on the platform which carries the grain across the platform as the rake does and the packers which shove the gavel onto the cord or wire and hold the gavel so that the binder arm may encircle it with the band, which is the last duty performed by the rake in the Gordon '68 machine.

120 38 X. So far as you know, were the packers operating in conjunction with the other mechanism, as in defendant's machine, known in 1868 as means of performing the functions they perform there?

A. I do not remember that the packers operating in conjunction with a spring resistance arm were known as early as 1868. My impression is that they were invented later.

39 X. If the mechanical means used in defendant's machine for raising the tilting board were omitted, and that tilting board held normally in its raised position by a constant spring, and only depressed to discharge the sheaf by discharging arms applying such pressure to the sheaf as to overcome the resistance of the spring,

would you still regard it as embracing the invention covered by the ninth claim of the '74 patent?

A. Yes.

40 X. Has the defendant's machine, in one of the suits in which you have already testified that you found an infringement of this ninth claim, been constructed as described in the last question?

A. Yes.

41 X. Have you, in any of the suits under complainants' patents above referred to, testified that you found any infringement upon the patents included in the present suit in respect to other claims than the first claim of the '68 patent, the ninth claim of the '74 patent, and the tenth claim of the '75 patent?

A. No.

42 X. Examine complainants' model of Gordon '75 patent and state whether you find therein the invention embraced in the ninth claim of the Gordon '74 patent.

A. No; I do not.

43 X. If, instead of the tilting board of defendants' machine, there were attached near the lower edge of the binder table, or what you term the apron, two or more elastic fingers curving upwards from the level of this table so as to prevent the falling of the grain when in this normal position, and yielding by reason of their elasticity to dump the gavel when forced out by the discharge arm, the machine remaining in other respects the same, would the invention of the ninth claim of the '74 patent still in your opinion be present?

121 A. I do not like to answer such a question without seeing the machine which the question is supposed to describe.

44 X. Assume that the elastic fingers referred to are attached to the binder table at its lower edge, curving up therefrom and preventing the passage of the grain when in that normal position that they are depressed by the operation of the discharger arm so as to dump the grain at the same instant in respect to other operations of the machine as the present tilting board, and that in other respects the machine remains the same, would it, in your opinion, embrace the invention of this ninth claim?

A. I make the same answer as to the last question.

45 X. Have you examined the state of the prior art with respect to this ninth claim?

A. No; I have not.

46 X. How long, to your knowledge, have spur gears and bevel gears sliding on their shafts for the purpose of transmitting motion from fixed mechanism to adjustable mechanism been known in mechanics?

A. Certainly long before the date of the earliest Gordon patent; probably many years longer.

47 X. How long, to your knowledge, have such gears mounted on a shaft which slid through the fixed driving gear been known to mechanics as a means of transmitting motion from fixed to adjustable mechanism?

A. I can't at this time recollect any special mechanism to which

they have been applied, but they have been used for many years prior to the earliest Gordon patent.

48 X. Have you examined the prior art with respect to the tenth claim of the Gordon '75 patent?

A. No; I have not.

HENRY B. RENWICK.

122 MONDAY, *June 1st*, 1885—10 a. m.

Same appearances.

JAMES A. MAXWELL, being duly sworn on behalf of complainants and examined by Mr. SELDEN, testified as follows:

1 Q. State in full your name, age, residence, and occupation.

A. James A. Maxwell; age, 69, Saturday next; residence, Caledonia, Livingston county, N. Y.; occupation, farming.

2 Q. How long have you lived in Caledonia?

A. Fifty-five years.

3 Q. Do you know James F. Gordon, who formerly resided in Caledonia; and, if so, how long have you known him?

A. I do; I have known him ever since he was a child.

4 Q. Were you present at a trial of a self-binding harvester invented by James F. Gordon, on the farm of Archibald Renwick, in Caledonia, during the year 1868?

Question objected to as immaterial and leading.

A. I was.

5 Q. How long were you present at said trial?

A. I was there nearly half a day.

6 Q. Can you state how much grain was cut and bound by the machine at this trial?

A. I could not state the precise quantity that was cut over, but about the usual quantity cut by a machine.

7 Q. State how the machine operated in cutting and binding the grain.

A. It done very well at that time.

8 Q. What was the character of the grain cut at that time—light or heavy?

A. It was wheat, very ripe, and would probably average over 20 bushels to the acre.

9 Q. State whether or not the machine bound all the bundles while you were present.

Question objected to as leading.

A. It did while I was present with the machine.

123 10 Q. Can you state how many persons were present at this trial?

A. I think there was over a hundred there; the whole town pretty much and other towns.

11 Q. Do you remember signing a certificate as to the operation of the binder on this occasion?

Question objected to as immaterial.

A. Yes, sir.

Witness is shown "Complainants' Exhibit Gordon's '68 Circular" and is asked:

12 Q. State whether or not the certificate therein printed is a copy of the certificate signed by you on the occasion of that trial, in 1868.

Objected to.

A. As far as my memory serves me it is.

13 Q. How many acres of grain do you usually raise each year, and are you in the habit of using a self-binding harvester to harvest the same?

A. I raise from 160 to 200 acres a year; I have used one since 1877.

Cross-examined by Mr. BOWMAN:

14 X. Was this machine you saw in 1868 the first machine you had ever seen which cut and bound grain?

A. I can't tell you positively; I might have seen them before, but I can't just remember. I have seen all the machines Gordon ever brought into that part of the country. I made it a point to see all kinds of farming machinery.

Redirect by Mr. SELDEN:

15 R. D. Do I understand you to say that this machine of Mr. Gordon's, which you saw in the harvest field in 1868, was the first self-binding harvester which you had seen at work in the field?

Question objected to as leading.

A. I think it was; if it was the first one he had there it was.

16 R. D. Had you previously seen a binding machine constructed by Mr. Gordon at Mumford?

Objected to as immaterial and leading.

124 A. I believe I had at James Blair's machine shop.

17 R. D. Can you state when it was you saw this binding machine of Mr. Gordon's at Blair's shop?

A. I think it was in 1867; I can't be positive, but I know it was before I saw the machine in operation on Mr. Renwick's farm.

J. A. MAXWELL.

Read and subscribed by deponent before me June 1, 1885.

DANIEL MCPHERSON, being sworn on behalf of complainants and examined by Mr. SELDEN, testified as follows:

1 Q. State in full your name, age, residence, and occupation.

A. Daniel McPherson; age, —; born, April 9, 1828; residence, Caledonia, Livingston county, N. Y.; occupation, farming, and I have taken out some patents.

2 Q. Are you the inventor and patentee of certain improvements in machinery for cutting and binding grain?

A. I am.

3 Q. How long have you known James F. Gordon, formerly of Caledonia, New York?

A. Thirty-nine years or over.

4 Q. Were you present at a trial of a combined harvester and binder built by Mr. James F. Gordon, in the harvest field in the town of Caledonia in the year 1868?

A. I was.

5 Q. On whose farm was this trial had?

A. On Mr. Wadsworth's farm; worked by Archibald Renwick.

6 Q. How long were you present at this trial?

A. I should judge from an hour and a half to two hours.

7 Q. Can you state how many persons were present at this trial?

A. I should judge from a hundred and fifty to —. They kept coming and going; a large crowd.

8 Q. What was the character of the grain in which the machine was tried?

A. Very heavy grain; somewhat tangled and lodged.

125 9 Q. How did the said machine operate in cutting and binding the grain on this trial?

A. It worked well.

10 Q. State whether or not the binding mechanism on this machine was adjustable lengthwise of the grain and relatively to the cutter bar.

A. It was.

11 Q. How much grain was cut by the machine while you were present at this trial?

A. They were cutting on a piece thirty or forty rods long, and were cutting all the time I was there, except when the crowd would want to see the machine and were looking at it.

12 Q. Did you examine the bundles bound by this machine on this trial?

A. I did.

13 Q. Did you see any which the machine failed to bind?

Question objected to as leading.

A. I did not.

14 Q. Do you remember signing a certificate describing the trial of the machine on this occasion?

A. I do.

Witness is shown Complainants' Exhibit Gordon's 1868 Circular and is asked:

15 Q. State whether or not the certificate printed in the said exhibit is a copy of the certificate signed by yourself and others at the time of this trial in Caledonia in 1868.

A. It is.

16 Q. State whether or not any inquiries have been made of you respecting Mr. Gordon's inventions by parties interested in the de-

fense in some of the suits now pending between Mr. Gordon and others and various manufacturers of self-binding harvesters; and, if so, give the substance of your conversation with them.

Question objected to as incompetent and immaterial.

A. A week ago last Thursday—I think it was Thursday—I received a telephone from the Johnston Harvester Company of Batavia at Caledonia to meet one of their men at the morning train on the Erie road the next morning. I went there as desired, and Mr. Ford came in on the train and I met him there at the depot.

126 He said to go in the depot; that he wanted to talk to me a moment. He asked me what I knew about James F. Gordon's first binder patent. I told him that I met Gordon at this (the Erie) depot the spring he first began getting up machines—the year I don't remember now, but it must have been 1863 or 1864 or in that neighborhood—and I said, "Jim, how are you getting along with your printing press?" "O," said he, "another man has got a patent ahead of me and I am now working at what you are working at—a self-binder. I am now making the patterns at home, and in about three weeks I will be at Blair's shop with you making a binder." Said I, "Have you got anything new in particular?" "Yes;" he said, "I have got one nice new feature, so as to slide the binder backward and forward so as to adjust the binder to any length of grain, long or short." I told him it was nonsense; he could just as well bolt the binder on for different lengths of grain as to shift it. He said it was very necessary; that some fields had long grain and short grain in the same field and we wanted a binder so the driver could adjust the binder for long grain or short while the team was moving. I laughed at him and told him it wasn't necessary. About three weeks from that time he came down to Mumford with all his castings in a wagon to make a binder. He worked in the shop there that summer, a good part of it. About the only thing he talked of there was what a nice thing this shifter was. I tried to persuade him at different times that it was not necessary and laughed at him about it. I told Mr. Ford the sum and substance of what the examiner has taken down here, and I advised him, after talking with him about the subject, that the best thing he could do was to go home and tell his folks to settle just as cheap as they could with Gordon, and that there was no question but that Gordon held that sliding motion. That is about all of that.

Answer objected to on the same grounds as the question.

127 17 Q. How long since you had seen either Mr. John H. Gordon or James F. Gordon before to-day?

Question objected to as immaterial.

A. I saw John H. Gordon the last time at the western New York fair, last fall, I think. I don't remember seeing James F. Gordon since a year ago last fair at the fair ground.

18 Q. How long since you had had any conversation with either of the Gordons about the invention of the adjustable binder?

A. I don't know as I ever had a talk with John. H. about it. A year ago last fall I saw James F. on the fair ground and asked how he was getting along prosecuting the infringers of his patents. He said he had not done much, but he was going to soon.

19 Q. Did you come to Rochester this morning to testify on this matter?

A. I did.

20 Q. At whose request?

A. James Fraser said that James F. Gordon sent word to him to see me and have me come down to-day.

21 Q. Have you any interest of any kind in the result of this litigation?

A. I have not, in no way, shape, or manner.

22 Q. Do you know what Mr. James F. Gordon's circumstances were at the time he was building this machine at Blair's?

Question objected to as immaterial.

A. He was poor.

23 Q. Did he work on the machine himself while at Blair's?

A. He did it all except forging the wrought iron.

Cross-examined by Mr. S. A. BOWMAN:

24 X. How is James Fraser related to you or to Mr. Gordon?

Objected to as immaterial.

A. He is no relation of mine. He is an uncle of Mr. Gordon's.

128 25 X. How did James Fraser get word to you to come down to-day?

Same objection.

A. My wife was at the depot and he told her to tell me.

26 X. When did your wife tell you?

Same objection.

A. As soon as she got home from Caledodia—probably about 6 o'clock last evening.

27 X. How far is Caledonia from here?

A. A little over twenty miles.

D. McPHERSON.

Read to witness and subscribed by him before me June 2, 1885.

EDWARD J. KELSEY, a witness on behalf of complainants, being duly sworn, testified as follows:

1 Q. What is your name, age, residence, and occupation?

A. Edward J. Kelsey; age, 44; residence, Rochester, N. Y.; have no particular occupation at present.

2 Q. What was your occupation during the year '65 to '70, and where did you reside at that time?

A. I resided in the town of Wheatland, Monroe county, and was a farmer at that time.

3 Q. Do you know James F. Gordon, one of the complainants herein; and, if so, how long have you known him?

A. I have known him more than twenty years.

4 Q. State whether or not you saw a grain-binder invented by James F. Gordon tried in the field in Caledonia, Livingston county, N. Y., in the year 1868.

Objected to as leading.

A. I did.

5 Q. On whose place was this machine tried?

A. On the place occupied by Mr. Archibald Renwick.

129 6 Q. How did the machine operate on this occasion in cutting and binding grain?

A. To the best of my recollection, it worked very nicely.

7 Q. Was this the first grain-binder you had ever seen in operation?

A. I can't state positively. I witnessed one other at work there at a trial, but whether it was before or after that I can't say now.

8 Q. How many persons were present on the occasion of this trial of Mr. Gordon's machine?

A. To my best recollection, I should say there were over a hundred there, considerable.

9 Q. Did you on this occasion sign a certificate describing the operation of this machine as witnessed by you?

A. I did.

Witness is shown Complainants' Exhibit Gordon's 1868 Circular and is asked:

10 Q. Is the copy of the certificate therein printed, dated Caledonia, August 4, 1868, a copy of the certificate signed by you?

Question objected to as incompetent and leading.

A. I know I signed a certificate somewhat of that nature, to the effect that it had worked to the pleasure of all and satisfactorily.

Cross-examination by Mr. S. A. BOWMAN:

11 X. Who brought the certificate to you for you to sign?

Objected to as immaterial.

A. I don't remember, sir.

Redirect by Mr. SELDEN:

12 R. D. Do you know who wrote the certificate?

A. No, sir.

EDWARD J. KELSEY.

Read to and subscribed by witness before me June 2, 1885.

130 DAVID MENZIE, being duly sworn on behalf of complainants and examined by Mr. SELDEN, testified as follows:

1 Q. State in full your name, age, residence, and occupation.

A. David Menzie; forty-seven; Caledonia; auctioneer and farmer.

2 Q. Do you know James F. Gordon, formerly of Caledonia, one of the complainants in this suit?

A. Yes, sir.

3 Q. How long have you known Mr. Gordon?

A. Over thirty years.

4 Q. Did you see a combined harvester and binder invented by Mr. Gordon in operation in the harvest field on the farm of Mr. Renwick in Caledonia in 1868?

Objected to as leading.

A. Yes, sir.

5 Q. Did you also see the same machine in operation on the farm of a Mr. Dean?

A. Yes, sir.

6 Q. How much grain did you see this machine cut and bind on these occasions?

A. I could not give the exact amount. It was part of two afternoons; one was in wheat and one in oats.

7 Q. State in what manner the machine performed the operations of cutting and binding the grain on these occasions.

A. It done the work very well.

8 Q. How many persons were present on these occasions?

A. I should say on the farm that Renwick worked—I should say from one hundred and fifty to two hundred persons. I don't think there were so many present on the Dean farm, but there were a good many there.

9 Q. Do you remember who drove the machine when you saw it in operation?

A. There was a man by the name of John Blue drove it on the Renwick farm. I do not remember who drove it on the Dean farm.

10 Q. What was Mr. Blue's occupation at this time?

A. He was a farmer.

131 11 Q. Have you, during the last five or six years, been engaged in the sale of combined harvesters and binders; and, if so, have you witnessed such machines in practical operation in cutting and binding grain?

A. I have sold harvesters and binders and seen them in operation.

12 Q. How did the practical working of the Gordon machine which you saw in 1868 compare with that of the binders you have seen during the last five or six years?

A. I have seen machines in the last five or six years that did not work as well as that.

13 Q. Did you see the Gordon 1868 machine miss any of the bundles of grain?

A. I don't recollect of seeing it.

Cross-examined by Mr. S. A. BOWMAN:

14 X. What was your occupation in the year 1868?

A. A farmer.

DAVID MENZIE.

Read to witness and subscribed by him before me June 2d, 1885.

Adjourned to —.

STATE OF NEW YORK, } ss:
County of Monroe, }

I, Adelbert Cronise, a notary public in and for said county and State and special examiner herein duly appointed, do hereby certify—

That the foregoing is a just and full report of all proceedings had and testimony taken before me herein.

That each witness was by me duly cautioned and sworn to testify the whole truth, his testimony by me reduced to writing or, by consent of counsel, reduced to writing by my assistant in my presence and in the presence of counsel, and thereafter read and subscribed and sworn to by each deponent before me and in the presence of counsel.

That I am not related to either of the parties hereto nor interested in the event of this action.

Rochester, N. Y., July 1st, 1885.

ADELBERT CRONISE,
Notary Public and Special Examiner.

[SEAL.]

132 & 133 Circuit Court of the United States, Southern District of Ohio. In Equity.

JAMES F. GORDON *et al.* }
vs.
HOOVER AND GAMBLE. }

It is hereby stipulated that the machine offered in evidence in behalf of complainant in the depositions of H. B. Renwick under name of "defendants' binder" may be taken as *prima facie* evidence of the character of machines manufactured and sold by defendants at Miamisburgh, Ohio, prior to the commencement of this suit and subsequent to the issue of all the patents herein sued upon.

PARKINSON & PARKINSON,
For Defendants.

Cincinnati, July 1, 1885.

Circuit Court of the United States, Southern District of Ohio. In Equity.

JAMES F. GORDON *et al.*
vs.
HOOVER AND GAMBLE. } No. 3698.

It is hereby stipulated that the depositions of J. A. Maxwell, Daniel McPherson, Edward J. Kelsey, and David Menzie, taken in behalf of complainants in the suit of these complainants *vs.* Benj. H. Warder *et al.*, now pending in the circuit court of the United States for the southern district of Ohio, may be used as evidence in the above-entitled cause with the same effect as if taken therein and subject to all objections and exceptions reserved in said depositions.

PARKINSON & PARKINSON.

134 And afterwards, to wit, on the 28th day of Jan., A. D. 1889, the following stipulation was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Stipulation.

United States Circuit Court, Southern District of Ohio, Western Division.

JOHN H. GORDON *et al.*
vs.
HOOVER & GAMBLE. } In Equity.

SAME
vs.
BENJ. H. WARDER *et al.* } In Equity.

It is hereby stipulated that any evidence taken and any exhibits offered in behalf of either party in either of the above-entitled causes may, so far as relevant, be referred to in the other and treated as a part of the evidence therein as fully as if taken and offered therein.

PARKINSON & PARKINSON,
For Complainants.
ESEK COWEN, *For Defendants.*

135 And afterwards, to wit, on the 28th day of January, A. D. 1889, the following bill of revivor was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Bill of Revivor.

United States Circuit Court, Southern District of Ohio.

JAMES F. GORDON, JOHN H. GORDON, and DAVID M. OSBORNE
against
ABEL HOOVER and WM. GAMBLE. } In Equity.

To the honorable the judges of the United States circuit court for the southern district of Ohio, in chancery sitting:

John H. Gordon, of Rochester, in the State of New York, and a citizen of the State of New York; Mary A. Gordon, of Rochester, in the State of New York, and a citizen of the State of New York; Eliza W. Osborne, of Auburn, N. Y., a citizen of said State of N. Y.; Frederick Harris, of Springfield, in the State of Massachusetts, and a citizen of the State of Massachusetts, and Thomas M. Osborne, of Auburn, in the State of New York, and a citizen of the State of New York, bring this their bill of revivor against Abel Hoover, of Miamisburg, in the State of Ohio; —— Gamble, of Miamisburg, in the State of Ohio, and a citizen of the State of Ohio, and
136 thereupon your orators complain and say that heretofore said John H. Gordon and James F. Gordon, late of Rochester, in the State of New York, and a citizen of the State of New York, but now deceased, and David M. Osborne, late of Auburn, in the State of New York, and a citizen of said State, but now deceased, on or about the 7th day of November, 1884, exhibited their said bill of complaint in this honorable court against the defendants as defendants thereto, alleging that said defendants had infringed certain letters patent of the United States lawfully owned by the said complainants, and had made and secured large gains and profits thereby, which of right belonged to said complainants, and had also inflicted great damage upon the complainants, which complainants ought of right to have and recover from said defendants, and praying for the issuance of process upon said bill and that defendants answer the allegations thereof; that the defendants be decreed to account for and pay over all such profits and pay all such damages and be perpetually restrained by the decree and injunction of this court from infringing said letters patent, as by said bill, reference being thereto had, will more fully and at large appear.

And the complainants further show unto your honors that said defendants, having been duly served with process in said cause, appeared and put in their answer to said bill, to which the said complainants put their replication, and said cause being thus at issue upon bill and answer, depositions having been taken by both parties in said cause, that the taking of the testimony is not wholly completed therein, and no final hearing in said cause has been had; that afterwards said David M. Osborne died, leaving a last will and testament, which, upon due proceedings therefor had, was duly proved and admitted to probate in the surrogate's court of Cayuga

county, in the State of New York, on the 16th day of July, 1886, and therein and thereby letters testamentary, with said will
137 annexed, as provided by said will, duly issued to said Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, who duly qualified as executors of said David M. Osborne, and thereby became and are duly qualified legal representatives of said David M. Osborne; that said suit and proceedings having become abated by the death of said David M. Osborne, your orators, said executors, are, as they are advised, entitled, as the personal representatives of said David M. Osborne, to have the said suit and proceedings revived against the said defendants and to have the said cause in the same state and condition as the same was previously to the death of said David M. Osborne.

That after the taking of said depositions said James F. Gordon departed this life, leaving a last will and testament appointing Mary A. Gordon his executrix, which will was, on the proceedings therefor duly had, duly proved and admitted to probate on the 16th day of September, 1886, in the surrogate's court for Monroe county, in the State of New York, and letters testamentary, with the will annexed, thereupon issued to said Mary A. Gordon, who duly qualified as such executrix, and thereby became and now is the legal representative of said James F. Gordon.

That said suit and proceedings have become abated by the death of James F. Gordon.

And your orators further show unto your honors that the said Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne are, as the legal representatives of said David M. Osborne, fully entitled to have and recover all that said David M. Osborne was entitled to have and recover by said bill in his lifetime, and said Mary A. Gordon, as the legal representative, is entitled to recover all that said James F. Gordon was entitled to recover during his lifetime by said bill.

Forasmuch, therefore, as your orators are without remedy except in a court of equity, and to the end that said defendants who are made parties to this bill may be required to make full, true,
138 and direct answer to the same, but not under oath, the answer under oath being hereby waived; that the said suit may stand revived and be in the same plight and condition as the same was at the deaths of said David M. Osborne and said James F. Gordon, and that your orators may have such further and other relief in the premises as equity may require and to your honors shall seem meet—

May it please your honors to grant unto the complainants a writ of subpœna to revive, issuing out of and under the seal of this honorable court, to be directed to said Abel Hoover and Wm. Gamble, hereby commanding them, at a certain day and under a certain penalty to be therein inserted, personally to be and appear before your honors in this honorable court, then and there to answer and show cause, if any they can, why the said suit and the proceedings therein had should not stand and be revived against them and be in the same plight and condition as the same were in at the time

of the abatement thereof, and, further, to stand to and abide such order and decree in the premises as to your honors shall seem meet; and your orators will ever pray, etc.

JOHN H. GORDON.
MARY A. GORDON.
ELIZA W. OSBORN.
FREDERICK HARRIS.
THOS. M. OSBORNE.

STEM & PECK, *Complainants' Solicitors.*
ESEK COWEN, *Of Counsel.*

UNITED STATES OF AMERICA,
Northern District of New York, } *ss:*

Thomas M. Osborne, being duly sworn, says that he is one of the complainants named in the foregoing bill of revivor and makes this verification in behalf of himself and his co-complainants;
139 that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

THOMAS M. OSBORNE.

Subscribed and sworn to before me this 16th day of November, 1886.

[SEAL.]

J. FRANK DAVIS,
Notary Public, Cayuga Co., N. Y.

SOUTHERN DISTRICT OF OHIO, *ss:*

A true and correct copy of the original on file in this office.
Attest:

B. R. COWEN, *Clerk,*
By B. E. DILLEY, *Deputy.*

140 And afterwards, to wit, on the 28th day of January, A. D. 1889, an entry was made upon the journal of said court clothed in the words & figures following, to wit:

Journal Y, p. 197.

United States Circuit Court, Southern District of Ohio.

JOHN H. GORDON, MARY A. GORDON (as Executrix of James F. Gordon, Dec'd), Eliza W. Osborne, Frederick Harris, and Thos. M. Osborne (as Executors of David M. Osborne, Deceased)
vs.
ABEL HOOVER and WM. GAMBLE. } In Equity.

Upon reading and filing the bill of revivor filed in the cause of James F. Gordon, John H. Gordon, and David M. Osborne against the above-named defendants by the above-named complainants and

the subpœna issued thereon, and the same having been duly served, and the solicitors of said defendants consenting thereto by stipulation on file herein, it is, upon consideration—

Ordered that said cause of John H. Gordon, James F. Gordon, and David M. Osborne be revived and stand entitled John H. Gordon, Mary A. Gordon (as executrix of James H. Gordon, deceased), and Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne (as executors of David M. Osborne, deceased) *vs.* the defendants above named, and that Mary A. Gordon shall be held and considered to hold and represent all the interest of said James F. Gordon in the original suit as executrix, and that Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne be held and considered to hold and represent all the interest of the said David M. Osborne in said original suit as executors, and that all the testimony herein heretofore taken or stipulated to be used in said original cause may be read and used in this cause as revived as though taken therein, and all stipulations made in said original cause shall be binding in this cause as though made therein.

141 And afterwards, to wit, on the 8th day of May, A. D. 1889, the following opinion was filed in the clerk's office of said court, clothed in the words & figures following, to wit:

Opinion of Judges Jackson and Sage.

142 Circuit Court of the United States for the Southern District of Ohio, Western Division.

JOHN H. GORDON *et als.*
vs.
BENJ. H. WARDER *et als.*
} In Equity. # 3697.

and

JOHN H. GORDON *et als.*
vs.
THE CHAMPION MACHINE CO.
} In Equity. # 3695.

and

JOHN H. GORDON *et als.*
vs.
WHITELY, FASSLER & KELLY.
} In Equity. # 3696.

and

JOHN H. GORDON *et als.*
vs.
ABEL HOOVER *et als.*
} In Equity. # 3698.

Without setting out in detail the facts in the above-entitled causes, which were heard together and in each of which the question is narrowed down to the single point whether the first claim of letters

patent # 77878 for certain "improvements in grain harvesters," issued May 12, 1868, to James-F. Gordon, is infringed by the attachable and adjustable binding machines used by the several defendants in connection with this harvester, the conclusions of the
142½ court, after a careful examination of the evidence and full consideration of the questions presented, are the following, viz:

1st. That in view of the proceedings which took place in the Patent Office before said letters patent # 77878 were granted, as disclosed in the file-wrapper and contents, showing that the patentee was required to and did narrow and limit the broad claim of his first application, covering and embracing the broad feature of a binding device or mechanism capable of adjustment in the direction of the length of the grain, in order to bind the bundle or gavel at or near the centre, by confining and restricting said claim as finally allowed to "the binding arm H, capable of adjustment in the direction of the length of the grain, in combination with an automatic twisting device, substantially as and for the purposes set forth," and in view of the state of the art as shown in the prior patents of Watson, Renwick & Watson, # 8083, dated May 13, 1851; of Watson & Renwick, # 9930, dated June 6, 1853; of S. S. Harlbut, # 7928, dated Feb. 4, 1851; of A. Sherwood, # 21540, granted Sept. 14, 1858, and of Allen Sherwood, # 25308, issued Aug. 30, 1859, said first claim of said letters patent # 77878, alleged to be infringed by defendant-, must be limited and confined to the specific combination embodied therein and described in the specification, including the rake as an element of said combination, and cannot be properly enlarged or broadened as a pioneer invention, as urged by counsel for complainants, so as to cover any and all binding devices or mechanism which are made adjustable to separate and independent harvester machines.

143 2nd. That if not so limited and restricted said letters patent # 77878 were anticipated by the patents above mentioned and therefore void.

3rd. That as limited and confined to the specific combination therein described said first claim of said letters patent is valid, but complainants cannot under said claim invoke in behalf of this patent the doctrine of equivalents or the liberal construction allowed to pioneer inventions so as to broaden said claim and thereby practically make it cover what the Patent Office had once rejected with the patentee'- acquiescence.

4th. That under this view of the proper restrictive construction to be placed upon said letters patent or the first claim thereof it neither anticipates the S. D. Carpenter patent nor was it anticipated by said Carpenter patent. Said Carpenter's patent and invention embodies the adjustable and independent binding mechanism such as defendants generally use and employ in connection with their grain-harvester.

5th. That the defendants' binding machines, which are entirely separate and independent and distinct from the grain-harvesters, although so constructed as to be attached to said harvesters and

made adjustable so as to bind the gavel centrally, do not when so used infringe the first claim of complainants' said patent # 77878.

The adjustable features of certain parts of a single combined machine or grain-harvester cannot in the light of the art as dis-
144 closed in prior patents be treated or regarded as the same or substantially the same thing as *are* independent binding mechanism adjustable as a whole with all its parts fixed and unadjustable simply because such binding device is used in connection with grain-harvesters.

6th. That the bills in the above-entitled causes should each be dismissed at complainants' costs, and it is accordingly so ordered and adjudged.

HOWELL E. JACKSON,
Circuit Judge.
GEORGE R. SAGE,
District Judge.

Esek Cowen, Geo. B. Selden, and Stem & Peck, for complainants; Benj. F. Thurston, Bowman & Bowman, and Parkinson & Parkinson, for defendants.

145 And afterwards, to wit, on the 9th day of May, A. D. 1889, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

Journal Y, p. 319.

This cause having been brought on for hearing and argued as well for complainant- as for defendant-, and having been duly considered by the court, it is ordered, adjudged, and decreed that the defendants' machines complained of do not infringe complainants' patent (being patent No. 77878, granted James F. Gordon May 12, 1868, for improvements in grain-binders); that the equities are with the defendant-, and that the bill of complaint be dismissed at complainants' costs; and thereupon complainants prayed an appeal to the Supreme Court of the United States, which appeal is granted and bond fixed at $1,000.

And afterwards, to wit, on the 6th day of July, A. D. 1889, the following petition was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Petition of Appeal.

Supreme Court of the United States.

JOHN H. GORDON, MARY A. GORDON, as Executrix of James F. Gordon, Deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as Executor- of David M. Osborne, Deceased, Appellants,

vs.

ABEL HOOVER and WM. GAMBLE, Appellees.

146 To the honorable the Supreme Court of the United States:

The appeal of John H. Gordon, Mary A. Gordon, as executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executors of David M. Osborne, deceased, the above-named complainants and appellants, respectfully showeth—

That on or about the 7th day of November, 1884, John H. Gordon, James F. Gordon, now deceased, and David M. Osborne, now deceased, filed their bill in the circuit court of the United States for the southern district of Ohio against the above-named defendant; that said cause was duly revived and entitled as above by order of the court on the 23rd day of December, 1886, said bill alleging that the defendant did infringe certain letters patent for improvements in grain-binders which were lawfully owned by the said complainants, the said bill showing the issue of said letters patent and the exclusive right and title of the said complainants in and to the same, and charging the defendant with infringement thereof by unlawfully and wrongfully making, using, and selling grain-binders containing and embodying the said invention and letters patent of the complainants, the said bill further praying that the defendant be restrained and enjoined from such alleged infringements and from using and selling such machines, and be compelled to account for and pay the complainants the gains and profits received by it, the defendant, from such alleged infringements, the damages which the complainants sustained, and the said defendant made and filed answer thereto and the complainants duly filed their replication to said answer, and both parties took proof in said cause,

147 and the said cause was brought on for final hearing before the court in the term of the first Tuesday of April, 1886, upon the pleadings and proofs therein; whereupon the said court on such hearing decided that the defendant's machines complained of did not infringe complainants' patent, being patent #77878, granted James F. Gordon May 12, 1868, for improvements in grain-binders; that the equities were with the defendant, and that the bill of complaint be dismissed at complainants' costs, and a final decree was made and pronounced in the cause on the 9th day of May, 1889, wherein it was in substance adjudged and decreed that the complainants' bill be dismissed, and that the complainants, these appellants, pay the costs.

Therefore these appellants appeal from the said final decree of the said circuit court and respectfully pray that the decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court may proceed to hear the said cause anew, and that the said decree dismissing complainants' bill, with costs, may be reversed and a decree made as prayed for in said bill, with such other decree as to the said Supreme Court shall seem just.

Dated Albany, N. Y., June 29th, 1889.

ESEK COWEN,
Of Counsel for Complainants, Appellants.

The foregoing appeal is allowed June —, 1889.

GEO. R. SAGE,
District Judge of the U. S., Southern District of Ohio, Sitting and Holding Circuit Court.

148 And afterwards, to wit, on the 6th day of July, A. D. 1889, the following appeal bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that I, Alfred M. Allen, of Glendale, Ohio, am held and firmly bound unto Able Hoover & William Gamble, of Miamisburg, O., in the sum of one thousand dollars, to be paid to the said Able Hoover and Wm. Gamble or their executors, administrators, and assigns: for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, by these presents.

Sealed with my seal and dated the fifth July, 1889.

Whereas at a circuit court of the United States within and for the southern district of Ohio, in a suit in equity pending in said court between John H. Gordon, Mary A. Gordon, as executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executors of David M. Osborne, deceased, complainants, and Able Hoover and William Gamble, defendants, a decree was rendered against the complainants, and the said complainants having obtained an appeal to remove the said case to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Able Hoover and Wm. Gamble, citing and admonishing them to be and appear at the October term, 1889, of the Supreme Court of the United States to be held at Washington:

149 Now, therefore, the condition of the above obligation is such that if the said John H. Gordon, Mary A. Gordon, executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executors of David M. Osborne, deceased, shal- prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the

above obligation to be null and void; otherwise to remain in full force and virtue.

ALFRED M. ALLEN. [SEAL.]

In the presence of—
ROB'T C. GEORGI.
GEO. C. WRIGHT.

The above security is approved.

GEO. R. SAGE,
District Judge of the United States, Southern District of Ohio, Sitting and Holding Circuit Court.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Alfred M. Allen, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth ten thousand dollars in real estate in my own name, situate in the county of ——, in said district.

ALFRED M. ALLEN.

150 Sworn to before me the 6th day of July, 1889.

ROB'T C. GEORGI,
Deputy Cl'k, U. S. Circuit Court, S. D. O. [SEAL.]

And afterwards, to wit, on the 12th day of July, A. D. 1889, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal Y, p. 384.

Now come the appellants and present herewith the appeal bond of Benedict Frenkel and pray that the same may be substituted as the appeal bond for the bond hereinbefore filed, to wit, on July 6th, 1889, which is accordingly done.

And afterwards, to wit, on the 12th day of July, A. D. 1889, the following appeal bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that I, Benedict Frenkel, of Cincinnati, Ohio, am held and firmly bound unto Able Hoover and William Gamble, of Miamisburg, Ohio, in the sum of one thousand dollars, to be paid to the said Able Hoover and William Gamble; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, by these presents.

Sealed with my seal and dated the 12th day of July, 1889.

151 Whereas at a circuit court of the United States within and for the southern district of Ohio, in a suit in equity pending in said court between John H. Gordon, Mary M. Gordon, as execu-

trix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executors of David M. Osborne, deceased, complainants, and Abel Hoover and Wm. Gamble, defendants, a decree was rendered against the complainants, and the said complainants having obtained an appeal to remove the said case to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Able Hoover and William Gamble, citing and admonishing them to be and appear at the October term, 1889, of the Supreme Court of the United States to be held at Washington:

Now, therefore, the condition of the above obligation is such that if the said John H. Gordon, Mary A. Gordon, executrix of James F. Gordon, deceased; Eliza W. Osborne, Frederick Harris, and Thomas M. Osborne, as executrix of David M. Osborne, deceased, shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

BENEDICT FRENKEL.

In presence of—
J. B. FRENKEL.
ROB'T C. GEORGI.

152 On the 12th day of July, 1889, before me personally came Benedict Frenkel, to me known and known to me to be the individual described in and who executed the foregoing bond, and he acknowledged that he executed the same.

ROB'T C. GEORGI,
[SEAL.] *Deputy Cl'k U. S. Cir. C't, S. D. O.*

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Benedict Frenkel, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth ten thousand dollars in real estate in my own name, situate in the county of Hamilton, in said district.

BENEDICT FRENKEL.

Sworn to before me the 12th day of July, 1889.

ROB'T C. GEORGI,
Deputy Clerk U. S. Circuit Court, S. D. O. [SEAL.]

153 And afterwards, to wit, on the 19th day of September, A. D. 1889, the following stipulation was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Stipulation.

United States Circuit Court, Southern District of Ohio.

JOHN H. GORDON & Others
vs.
BENJAMIN H. WARDER and Others.

SAME
vs.
WHITELY, FASSLER & KELLY.

SAME
vs.
THE CHAMPION MACHINE COMPANY.

SAME
vs.
ABEL HOOVER & Another.

The evidence taken in either of the above-entitled causes having been treated upon the hearing in the circuit court as if taken in all of them, so far as pertinent, and it being the desire of the respective counsel that the same should be so used upon appeal, and
154 that the same depositions and exhibits should not be duplicated in the transcripts carried to the supreme court, it is hereby stipulated that the clerk of the circuit court shall, upon an appeal to the Supreme Court of the United States being taken in each of the above-entitled causes, certify to that court the pleadings in each case, together with such evidence as has been filed therein, and that the evidence taken and filed in the suit wherein Benjamin Warder *et al.* are defendants and the suit wherein Abel Hoover *et al.* are defendants shall, so far as pertinent, be referred to and used upon the hearing in the supreme court with the same effect as if taken and filed in all of said causes.

PARKINSON & PARKINSON,
Of Counsel for Defendants.
ARTHUR STEM,
Solicitor for Complainants.

155 THE UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing is a full, true, and complete transcript of the proceedings had by and before said court, except exhibits, in the above-entitled cause, as the same appears of record and on file in the clerk's office of said court.

Seal of the Circuit Court, South'n Dist. of Ohio.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, O., this 10th day of October, A. D. 1889.

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.*